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In the Privy Council.

A. F. Riddell
from
E. W. Rudyard

THE STATE OF SOUTH AUSTRALIA

v.

THE STATE OF VICTORIA.

A SELECTION OF

Records of the Privy Council, mainly of the 18th Century, relating to Boundary Disputes referred to the King in Council.

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LEGEND.

The lower number in the margins is the Record Office reference number. At this date (Nov. 1913) the Privy Council Registers, prior to the reign of George III., are deposited at the Record Office.

PENN AND BALTEMORE.

1734.

These cases were compiled
some for the argument
in the Victorian case -

EXTRACTS FROM COUNCIL REGISTERS, No. 16, CHARLES 2ND., PART I., JAMES 2ND., AND No. 4., ANNE.

Council Register. Charles II. Vol. XVI. 1st June 1680 to 31st May 1683.

Page 702 (69).

AT THE COURT AT HAMPTON COURT,

THE 31ST OF MAY, 1683.

Present:

The King's Most Excellent Majesty.

Lord Archbishop of Canterbury,	Earle of Nottingham,
Lord Keeper,	Earle of Rochester,
Lord President,	Lord Dartmouth,
Lord Privy Seale,	Mr. Coventry,
Duke of Ormond,	Mr. Secretary Jenkins,
Earle of Huntingdon,	Mr. Chancellor of ye Exchequer,
Earle of Sunderland,	Mr. Chancellor of the Duchy,
Earle of Clarlendon,	Lord Chief Justice Pemberton,
Earle of Craven,	Mr. Godolphin.

Lord Baltemore.

Referred to ye Committee of Trade.

Upon reading this day at the Board the humble petition of Richard Burke, Gent. servant of the Right Honorable Charles Lord Baltemore, praying in behalfe of his Lordship that a grant (which is passing) from His Majesty to his Royall Highness the Duke of Yorke of the towne of Newcastle and the ajacent country on the confines of Maryland may not passe the Great Seale, untill His Majesty shal be satisfyed of the extent of the Letters Patents formerly granted to Cecill Lord Baltemore, wherein the said towne and ajacent country is alledged to be comprised; His Majesty in Council was pleased to order that the examination of that whole matter be, and it is hereby referred to the Right Honorable the Lords Committees of this Board for Trade and Forreigne Plantations, and upon their Lordships' report of the state thereof with their opinion thereupon His Majesty will declare his further pleasure.

AT THE COURT AT WHITEHALL,

THE 13TH DAY OF NOVEMBER, 1685.

Council Register. James II. Part I. 6th Feb. 1684/5 to 18th March 1686/7.

Page 156 (71).

Present:

The King's Most Excellent Majesty.

His Royall Highness Prince George of Denmarke,	Earle of Crauen,
Lord Archbishop of Canterbury,	Earle of Berkeley,
Lord Chancellor,	Earle of Nottingham,
Lord Treasurer,	Earle of Plymouth,
Lord Privy Seale,	Earle of Morray,
Duke of Ormond,	Earle of Middleton,
Duke of Beaufort,	Lord Viscount Fauconberge,
Duke of Queensberry,	Lord Viscount Preston,
Lord Chamberlaine,	Lord Viscount Melfort,
Earle of Huntingdon,	Lord Bishop of London,
Earle of Bridgewater,	Lord Dartmouth,
Earle of Peterborough,	Lord Godolphin,
Earle of Sunderland,	Mr. Chancellor of ye Exchequer.

The Report of ye Differences between the Lord Baltemore and Wm. Penn Appd. and ye lands to be divided accordingly.

The following Report from the Right Honorable the Lords of ye Comittee for Trade and Forreigne Plantations being this day read at the Board,

The Lords of ye Comittee for Trade and Plantations having, pursuant to His late Majestye's Order in Council of ye 31th of May, 1683, examined the matters in difference between the Lord Baltemore and William Penn, Esquire, in behalf of His present Majesty concerning a tract of land in America, commonly called Delaware. Their Lordships find that ye land intended to be granted by the Lord Baltemore's Patent was only land uncultivated and inhabited by savages. And that this tract of land, now in dispute, was inhabited and planted by Christians at and before the date of the Lord Baltemore's Patent, as it hath been ever since to this time, and continued as a distinct Colony from that of Maryland. So that their Lordships humbly offer their opinion, that for avoyding further differences, the tract of land lying between the river and the eastern sea, on the one side, and Cheasaspeake Bay on the other, be divided into equall parts, by a line from the latitude of Cape Hinlopen to the fortieth degree of northerne latitude, and that one-half thereof lying towards the Bay of Delaware, and the easterne sea, be adjudged to belong to His Majesty, and that the other halfe remains to the Lord Baltemore, as comprised within his Charter.

Councill Chamber, 7th of November, 1685.

His Majesty well approving of ye sayd Report, It was thereupon ordered by His Majesty in Councill, That the sayd lands be forthwith divided accordingly. Whereof the sayd Lord Baltemore, and William Penn, Esquire, together with their respective officers, and all others whom it may concerne, are to take notice, and give due and ready obedience thereunto.

290235

AT THE COURT AT ST. JAMES'S,

THE 9TH OF JANUARY, 1708.

Council Register.
Anne R.
Vol. IV.
5th March 1707
to
2nd May 1710.

Page 236
(82).

Present:

The Queen's Most Excellent Majesty.

Lord Chancellor,	Duke of Somersett,
Lord Treasurer,	Lord High Admirall,
Lord President,	Earle of Sunderland,
Lord Privy Seale,	Mr. Secretary Boyle.

Lord Baltimore's petition about ye boundaries of Maryland and Pensylvania.

Upon reading this day at the Board the humble petition of Charles Lord Baltimore, proprietor of the Province of Maryland, relating to some differences between William Penn, Esquire, proprietor of the Province of Pensylvania, And the petitioner touching the boundaries of the said Provinces. It is ordered by Her Majesty in Councill, That the said petition (a copy whereof is hereunto annexed) be, and it is hereby referred to the Lords Commissioners of Trade and Plantations, to examine the allegations thereof, and to report to this Board, what they conceive Her Majesty may fitly doe therein.

Refd.

AT THE COURT AT ST. JAMES'S,

THE 27TH OF JANUARY, 1708.

Council Register.
Anne R.
Vol. IV.
5th March 1707
to
2nd May 1710.

Pages 245-6
(82).

Present:

The Queen's Most Excellent Majesty.

Lord Chancellor,	Earle of Bindon,
Lord Treasurer,	Earle of Mar,
Lord President,	Earle of Seafield,
Duke of Somersett,	Lord Viscount Townshend,
Duke of Bolton,	Lord Lexington,
Duke of Leeds,	Lord Coningsby,
Marquis of Kent,	Mr. Secretary Boyle,
Lord High Admirall,	Mr. Chancellor of ye Exchequer,
Earle of Derby,	Mr. Vice Chamberlain,
Earle of Manchester,	Lord Chief Justice Holt,
Earle of Sunderland,	Lord Chief Justice Trevor,
Earle of Stamford,	Sir Cha. Hedges,
Earle of Essex,	Mr. Vernon,
Earle of Radnor,	Mr. How,
Earle of Wharton,	Lt.-Generall Erle.
Earle of Poulett,	

Wm. Penn. of Pensylvania against ye Lord Baltimore, a petition of said lands to be dismist.

Upon reading this day at the Board the humble petition of William Penn, Esquire, Proprietary under Her Majesty of the Province of Pensylvania, in America, setting forth that upon a complaint formerly made by Charles Lord Baltimore, proprietor of the Province of Maryland, the respective boundaries of those countrys had, after severall hearings of both partys and their Councill before the Lords of His Majesty's most Honorable Privy Councill who were the then Committee for Trade and Plantations, been setled on the seventh day of November, 1685, confirmed by an Order of His Late Majesty King James the 2nd. in Councill, which the Lord Baltimore had acquiess'd under for three and twenty years, and praying that a late petition of the Lord Baltimore to Her Majesty for vacating the said Order may be dismissed, Her Majesty in Council taking the same into her consideration, is graciously pleased to order accordingly that the said petition of the Lord Baltimore be, and it is hereby dismiss'd, and that the Lords Commissioners for Trade and Plantations to whom that petition was by an Order of this Board of the 9th instant referred, do not proceed to examine into the allegations thereof as by the same Order was directed.

AT THE COURT AT ST. JAMES'S,

THE 16TH OF APRIL, 1709.

Council Register.
Anne R.
Vol. IV.
5th March 1707
to
2nd May 1710.

Page 304
(82).

Present:

The Queen's Most Excellent Majesty.

Lord Chancellor,	Earl of Stamford,
Lord Treasurer,	Earl of Sunderland,
Lord President,	Earl of Radnor,
Lord Privy Seale,	Earl of Scarbrough,
Duke of Bolton,	Earl of Mar,
Duke of Schonberg,	Earl of Loudoun,
Duke of Queensberry,	Earl of Seafeild,
Duke of Montross,	Lord Coningsby,
Marquis of Kent,	Mr. Vice Chamberlain,
Lord High Admirall,	Lord Chief Justice Holt,
Earl of Manchester,	Mr. Vernon,
Earl of Essex,	Lieut.-General Erle,
Earl of Carlisle,	Mr. How.

Pensylvania.

Mr. Penn touching the boundarys of his Province and Maryland may be settled.

Upon reading this day at the Board the humble petition of William Penn, Esquire, Proprietary and Governour of Pensylvania, under Her Majesty, humbly praying that the respective boundarys of the Provinces of Maryland and Pensylvania may be settled, according to former orders and instructions in that behalfe. It is ordered by Her Majesty in Councill that the consideration of the said petition be, and it is hereby referred to the Lords Commissioners of Trade and Plantations, who are to state the matter of fact, according to former proceedings, and to report to this Board what they conceive fitt to be done thereupon.

AT THE COURT AT ST. JAMES'S,

THE 19TH OF MAY, 1709.

Council Register.
Anne R.
Vol. IV.
5th March 1707
to
2nd May 1710.

Page 316
(82).

Present:

The Queen's Most Excellent Majesty.

Lord Chancellor,	Earle of Berckley,
Lord Treasurer,	Earle of Mar,
Lord President,	Earle of Loudoun,
Lord Privy Seal,	Earle of Seafeild,
Lord Stewart,	Lord Coningsby,
Duke of Schonberg,	Mr. Secretary Boyle,
Duke of Queensberry,	Mr. Vice Chamberlain,
Lord High Admirall,	Mr. Chancellor of ye Exchequer,
Earle of Manchester,	Lord Chief Justice Holt,
Earle of Stamford,	Mr. Vernon.
Earle of Radnor,	

Lord Baltimore praying to be heard against Mr. Penn, touching their boundarys in Maryland and Pensylvania.

Upon reading this day at the Board the humble petition of Charles Lord Baltimore, Proprietor under Her Majesty of the Provinces of Maryland, praying to be relieved against an Order of Council of the 7th of November, 1685, alleged to be obtained on false suggestions by William Penn, Esquire, Proprietor of Pensilvania, whereby one moyety of an istmus of the petitioner's land in Maryland was adjudged from him, which deprived the petitioner of his inheritance granted to him by Her Majesty's Royal grandfather as in the petition annexed more at large appears. Her Majesty, takeing the same into consideration, was graciously pleased with the advice of Her Privy Council to order that the matter of the said petition be heard before Her Majesty at this Board on Thursday, the nineth of June next, whereof all parties concerned are to take notice and come prepared to be heard with their councill learned at that time accordingly.

AT THE COURT AT ST. JAMES'S.

THE 9TH OF JUNE, 1709.

Present:

The Queen's Most Excellent Majesty.

Lord Chancellor,	Earl of Sunderland,
Lord Treasurer,	Earl of Radnor,
Lord President,	Earl of Loudoun,
Duke of Somerset,	Mr. Comptroller,
Duke of Bolton,	Mr. Vice Chamberlain,
Duke of Roxborough,	Mr. Vernon.
Lord Chamberlain,	

Council Register. Anne R. Vol. IV. 5th March 1707 to 2nd May 1710.

Page 331 (82).

Lord Baltimore and Mr. Penn to be heard ye 23th.

It is this day ordered by Her Majesty in Council that ye hearing of ye matter in difference, between Charles Lord Baltimore, proprietor under Her Majesty of ye Province of Maryland, and William Penn, Esquire, Proprietor of Pensilvania (appointed for this day) be put off to Thursday, the 23th instant, whereof ye parties concerned are to take notice, and come prepared to be heard by their councill learned at that time.

AT THE COURT AT ST. JAMES'S.

THE 23RD OF JUNE, 1709.

(Thursday afternoon.)

Present:

The Queen's Most Excellent Majesty.

Lord Chancellor,	Mr. Secretary Boyle,
Lord Treasurer,	Mr. Comptroller,
Lord President,	Mr. Vice Chamberlain,
Duke of Queensberry,	Mr. Chancellor of ye Exchequer,
Lord High Admirall,	Lord Chief Justice Holt,
Earl of Berkeley,	Master of the Rolls,
Earl of Radnor,	Lord Chief Justice Trevor,
Earl of Loudoun,	Mr. Vernon.
Lord Dartmouth,	

Council Register. Anne R. Vol. IV. 5th March 1707 to 2nd May 1710.

Page 340 (82).

Lord Baltemore and Mr. Penn heard and his Lordship's petition dismissed.

Whereas upon ye humble petition of Charles Lord Baltemore, Proprietor under Her Majesty of the Province of Maryland, praying to be heard against an Order in Councill of the 13th of November, 1685, dividing an isthmus or tract of land in America, lying betwen ye bay and river of Delaware, and ye Eastern Sea on ye one side, and Cheasaspeake Bay on the other, one moyety to the Crown and another to the petitioner, and that the differences between the petitioner and William Penn, Esquire, Proprietor of Pensilvania, touching the boundarys of their respective Provinces, may be adjusted; which order of the 13th of November, 1685, the petitioner alleges to have been obtayned by ye false suggestions of Mr. Penn and without ye petitioner having been heard thereupon. Her Majesty was pleased by Order of the 19th of May last to appoint ye hearing of this matter in councill. And accordingly both parties this day attending, and being fully heard with their councill learned. And it appearing by authentick copies of proceedings at this Board, that as well the petitioner as the said Mr. Penn had been divers times heard before ye making of the said Order Her Majesty, with the advice of Her Privy Councill, is pleased to order, that the Lord Baltemore's petition be dismissed this Board, and that the abovenamed Order of Councill of the 13th of November, 1685, be ratifyed and confirmed in all its points, and be put in execution without any further delay. Whereof the parties concerned are to take notice and yield obedience accordingly.

CONNECTICUT AND RHODE ISLAND.

1725.

EXTRACTS FROM COUNCIL REGISTER

No. 5, GEORGE 1st.

Council Register. No. 5. Geo. 1st. Sept. 1724 to May 1727.

AT THE COUNCIL CHAMBER, WHITEHALL.

THE 19TH DAY OF FEBRUARY, 1725.

Page 194 (89).

By the Right Honorable the Lords of the Committee for Plantation Affairs.

Present:

Archbishop of York,
Lord President,
Duke of Ancaster,
Earl of Findlater,
Earl of Ilay,
Lord Viscount Townshend,
Lord Bishop of London,
Master of the Rolls.

Connecticutt and Rhode Island.

Upon reading, this day, at the Board, a Report from the Lords Commissioners for Trade and Plantations, dated the 25th of last month, concerning the settling of the boundarys between the Colonys of Connecticutt and Rhode Island:—Their Lordships are pleased to order, as it is hereby ordered, that the agents of the said Colonys have liberty to take out copys of the said Report; and if they have any objections to make thereto, that they do lay the same before this Committee on Fryday next at five of the clock in the afternoon.

Agents to have copys of the report of ye Board of Trade about their boundarys.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 5. Geo. 1st. Sept. 1724 to May 1727.

THE 19TH DAY OF MARCH, 1725.

Page 203 (89).

By the Right Honorable the Lords of the Committee for Hearing Appeals from the Plantations, &c.

Present:

Arch Bishop of York,
Lord President,
Earl of Findlater,
Lord Chief Justice Raymond,
Lord Chief Justice Eyre,
Master of the Rolls.

Rhode Island, Connecticut, etc.

Upon reading, this day, to their Lordships a Paper of Objections presented by Jere: Dummer, agent for His Majesty Colony of Connecticut, to the Report of the Lords Commissioners of Trade and Plantations about setling the boundaries between that Colony and Rhode Island, and also upon reading a Petition of Richard Partridge, agent for the Colony of Rhode Island and Providence Plantations, relating to the setling the said boundaries:—The Lords of the Committee are thereupon pleased to order that the agent of Rhode Island have liberty to take out a copy of the said objections presented by Mr. Dummer, and that Mr. Dummer have also liberty to take out a copy of the said Petition of Richard Partridge, and if they desire to be heard thereupon before this Committee, they are to make application to their Lordships for a day to be appointed for that purpose.

The Agents of these Colonys to have copys of each others papers relating to the settling their boundarys.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 5. Geo. 1st. Sept. 1724 to May 1727.

THE 2ND DAY OF AUGUST, 1726.

Page 264-5 (89).

By a Committee of the Lords of His Majesty's Most Honorable Privy Council.
COUNCIL.

Present:

Lord President,
Lord Privy Seal,
Duke of Queensberry,
Earl of Ilay,
Lord Viscount Townshend,
Lord Bishop of London,
Mr. Chancellor of the Exchequer,
Lieut.-General of ye Ordnance.

Rhode Island and Providence Plantations and Connecticut.

Your Majesty having been pleased to refer unto the consideration of this Committee the humble Petition of Joseph Jonks and Richard Partridge, agents for the Colony of Rhode Island and Providence Plantations in New England, relating to the boundaries between them and the Colony of Connecticut, and praying that the same might be settled and confirmed to them according to their charter. The Lords of the Committee, in pursuance of your Majesty's said order, have taken the said Petition into consideration, together with an answer thereto from Mr. Dummer, agent

Committee Report for setling the boundarys between these Provinces.

for the Colony of Connecticut, and having received the opinion of the Lords Commissioners for Trade and Plantations hereupon and heard the agents concerned. Their Lordships do agree humbly to report to your Majesty that it appears to them—

That on the 17th of March, 1643, a grant was made by the Earl of Warwick and others, at that time appointed Commissioners by the Parliament for the Government and regulation of the Plantations to the people of Rhode Island and Providence Plantations of a tract of land bounded as follows (vizt.):—North and north-east on the Patent of Massachusetts, east and south-east on Plymouth Patent, south on the Ocean, and on the west and north-west inhabited by Indians called Norroganncuchs, *alias* Narragansetts, the whole tract extending about twenty-five English miles unto the Pequet River and Country, which instrument, though it cannot be reputed valid in law, yet in some measure is an evidence of what was reputed to be the boundary of the province.

That after the Restoration application was made to His Majesty King Charles the 2nd by the agents of Connecticut and Rhode Island for Charters to fix the respective Governments and Boundaries of the said Provinces and Charters were accordingly granted for that purpose.

But the Charter for Connecticut being obtained previous to that of Rhode Island and Providence Plantations, the boundaries of Connecticut were endeavoured to be fixed to their advantage.

The said Charter for Connecticut bears date the 23rd of April, 1662, and their bounds are described in the following manner (vizt):—"All that part of our Dominions in New England and America bounded on the east by Narraganset River, commonly called Narraganset Bay, where the said river falleth into the sea, and on the north by the line of the Massachusetts Plantation, and on the south by the sea, and in longitude as the line of the Massachusetts Colony running from east to west (that is to say) from the said Narraganset Bay on the east to the South Sea on the west part, with the islands thereunto adjoyning together with all firm lands, soils, grounds, &c.

That the people of Rhode Island and Providence Plantations, apprehending that the said Connecticut Charter so bounded might justly swallow up great part of their territories and cut off all their pretensions to anything upon the Continent. This grievance they complained of soon after the said Charter was obtained, and it doth happen—

That John Winthorp and John Clark, then agents for the respective Colonys of Connecticut and Rhode Island and Providence Plantations (notwithstanding the said Charter to Connecticut) did in April, 1663, submit to arbitration what should be the boundaries between the said Colonys, and it appears—

That the Charter which was afterwards granted to Rhode Island in the 15th year of Charles the 2nd, takes notice of the aforesaid arbitration, and hath fixed their boundaries in the following manner (vizt):—All that part of our Dominions in New England, in America, containing the Nahhautick Naughiggansit, *alias* Narraganset Bay and country and parts adjacent, bounded on the west or westerly by the middle or channel of a river there, commonly known by the name of Pacatuck al Pawacatuck River, and so along the said river, as the great or middle stream thereof reacheth or lies up into the country northward unto the head thereof, and from thence by a strait line drawn due north until it meet with the south line of the Massachusetts Colony, and on the north or northerly by the aforesaid south or southerly line of the Massachusetts Colony or Plantation, and extending towards the east or easterly three English miles, to the east or north-east of the most eastern or north-eastern parts of the aforesaid Narragansetts Bay, as the said bay lies or extendeth itself from the ocean on the south or southerly unto the mouth of the river, which runneth towards the Town of Providence, and from thence along the easterly side or bank of the said river higher, called by the name of Seacunk River, unto the falls, called Patuckett Falls, being the most northerly line of Plymouth Colony, and so from the said falls into a straight line due north until it meet with the aforesaid line of the Massachusetts Colony, and bounded on the south by the ocean, and in particular the lands belonging to the Town of Providence, Patuzet, Warwick Misquammacock, *alias* Pawcatuck, and the rest upon the main land in the tract aforesaid, together with Rhode Island, Block Island, and all the rest of the islands and banks in the Narraganset Bay, and bordering upon the coast of the tract aforesaid, Fishers Island only excepted, together with all firm lands, soils, &c., and, further, the said Charter directs that the River Pawcatuck shall at all times thereafter be called and deemed to be the Narraganset River mentioned for a boundary in the Charter to Connecticut.

From which pretended grant of the Earl of Warwick and others to Rhode Island and Providence Plantation, as also from the submission of the boundaries to arbitration by the agents of both Colonys so soon after the Charter for Connecticut had been obtained, and by the Charter to Rhode Island and Providence Plantations. It appears—

That King Charles the Second was surprised in his grant to Connecticut as to the boundaries, and that such arbitration and subsequent Charter was intended to redress the grievance complained of by Rhode Island and Providence Plantation. It also appears—

That so lately as in 1703, by agreement between Commissioners appointed in October, 1702, in behalf of the said Colonys, respectively, for settling their boundarys, it was agreed that the western boundary between Rhode Island and Providence Plantation and Connecticut should for the future be formed by a line to be drawn from the

mouth of Asshaway River, where it falls into Pawcatuck River, and thence extending north to the south line of the Masachusetts Bay, which line is particularly described on the map hereunto annexed—and it also appears—

That the Commissioners of Connecticut did actually meet and concur with those of Rhode Island in drawing the said line as a boundary between the two Colonys, and which line is particularly described in green on the said map hereunto annexed.

And by the said appointment of the General Assembly of Connecticut in October, 1702, it plainly appears the General Assembly of Connecticut approved of the said arbitration of their agent Winthorp in 1663, they expressly providing in the instrument that nothing to be done by these Commissioners shall alter or change the property of any persons lands, but that property shall be saved according to the agreement of their late agent, John Winthorp, made in the year 1663, with Mr. Clark, agent for Rhode Island—which is a strong proof that the Government of Connecticut apprehended the pretensions of Rhode Island were just and equitable.

It also is very full in proof that the people of Rhode Island have been in possession of several tracts of land extending west from the Narragansett Bay to the red and green lines marked in the said map hereto annexed as the boundaries between the said colonies, and that the taxes had been constantly paid for the same to Rhode Island Government.

It also further appears that the Government of Connecticut have sent two letters on this occasion, one to the Lords Commissioners for Trade and Plantations of the 28th day of October, 1723; and the other to Mr. Dummer, their agent here in which letter to their agent they express themselves thus (vizt.):—"The Government of Rhode Island is in the actual possession as they themselves own of the land which they claim, and we think belongs to us, we don't think fit to disturb them in that possession. It is not we, but they, that have made this complaint if they would have sett still with all they desired their Lordships had not been troubled as they now are with this story." And in both their letters the Government of Connecticut leave the bounds to be settled by His Majesty according to Rhode Island charter.

Their letter to the Lords Commissioners of Trade running in these words (vizt.):—"And we assure your Lordships that, notwithstanding the priority of our charter to that of Rhode Island, His Majesty's determination will, on our part, put a perpetual end to the controversy and confirm that peace between us and them which your Lordships have been pleased to express such a regard for."

And their letter to their agent runs in these words (vizt.):—"They doubt not but this matter (of the boundaries) will have a good issue one time or other, and even now if their Lordships would let them (the Rhode Island people) understand that they must be contented with these bounds set them in their own charter, and tell them how those bounds must be understood and taken that would end the controversy they would have no reason to complain nor should we give them the least trouble in the law though our charter be prior to theirs."

All which being considered by their Lordships though the red line in the annexed map is what the Rhode Island people insist on as the true boundary between them and Connecticut, according to their charter, yet, as the green line in the said annexed map was determined in 1703, to be the division line between the two Colonys by the Commissioners of each Government respectively appointed for that purpose. Their Lordships are humbly (*sic.*) of to advise His Majesty that he would be graciously pleased to signify his pleasure that the boundary line between the said two colonies is described by the aforesaid green line may for ever hereafter be the settled boundary between the said two colonies of Connecticut and Rhode Island and Providence Plantations.

Council Register.
No. 5.
Geo. 1st.
Sept. 1724
to
May 1727.

Page 269
(89).

Rhode Island and Connecticut.

AT THE COUNCIL CHAMBER, WHITEHALL.

THE 8TH DAY OF AUGUST, 1726.

By a Committee of the Lords of His Majesty's Most Honorable Privy Council.

Present:

Lord President,
Lord Privy Seal,
Duke of Queensberry,
Earl of Westmoreland,
Lord Viscount Townshend.

The Committee report about setting the boundarys of these Provinces to be postponed till the next Committee.

Their Lordships are pleased to order that the report agreed to be made to His Majesty on the 2nd of this instant relating to the boundarys between Rhode Island and Connecticut should be postponed till the next meeting of this Committee.

Council Register.
No. 5.
Geo. 1st.
Sept. 1724
to
May 1727.

Pages 299–303
(89).

AT THE COUNCIL CHAMBER, WHITEHALL.

THE 20TH DAY OF JANUARY, 1726.

By the Right Honorable the Lords of the Committee for hearing Appeals from the Plantations, &c.

Present:

Lord President,
Lord Privy Seale,
Earl of Findlater,
Lord Bishop of London,
Master of the Rolls.

Rhode Island and Providence Plantation.

Report of the Committee for setling the boundarys between these Provinces.

Your Majesty having been pleased to refer into the consideration of this Committee the humble Petition of Joseph Jenks and Richard Partridge agents for the Colony of Rhode Island and Providence Plantations in New England relating to the boundaries between them and the Colony of Connecticut, and praying that the same may be settled and confirmed to them according to their charter. The Lords of the Committee in pursuance of your Majesty's said order have taken the said petition into consideration together with an answer thereto from Mr. Dummer, agent for the Colony of Connecticut, and having received the opinion of the Lords Commissioners for Trade and Plantations upon this affair. Their Lordships did several times summon the agents concerned to appear before them in order to be heard thereupon. But the agent for Connecticut not appearing till the 2nd day of August last, and he then not offering anything to induce their Lordships to differ in opinion with the said Lords Commissioners for Trade and Plantations. The Lords of the Committee did then order a report of the whole matter to be drawn up and laid before your Majesty. Yet the said Mr. Dummer desiring a further opportunity to be heard. Their Lordships have hitherto deferred making their said report to your Majesty, and the said agent not having appeared since that time though twice summoned to attend, nor desired to be heard hereupon by his counsel. Their Lordships do now agree humbly to report to your Majesty the State of the case as it appears to them from the said reports of the Lords Commissioners for Trade and Plantations, viz. :—

That on the 17th of March, 1643, a grant was made by the Earl of Warwick and others at that time appointed Commissioners by the Parliament for the government and regulation of the Plantations, to the people of Rhode Island and Providencve Plantations of a tract of land bounded as follows (vizt.) : —North and North-East on the Patent of Massachusetts, East and South-East on Plymouth Patent, South of the Ocean, and on the West and North-West inhabited by Indians called Narrowgasineuchs, *alias* Narrowgansets. The whole tract extending about 25 English miles unto the Pequet River and country—which instrument though it cannot be reputed valid in law yet in some measure is an evidence of what was then reputed to be the boundary of the province.

That after the restoration application was made to His Majesty King Charles the Second by the agents of Connecticut and Rhode Island for charters to fix the respective governments and boundaries of the said provinces and charters were accordingly granted for that purpose.

But the charter for Connecticut being obtained previous to that of Rhode Island and Providence Plantation the boundaries of Connecticut were endeavoured to be fixed to their advantage.

That the said Charter for Connecticut bears date the 23rd of April, 1662, and their bounds are described in the following manner (viz.) :—"All that part of our dominions in New England, in America, bounded on the East by the Narrowganset River commonly called Narrowganset Bay, where the said River falleth into the sea, and on the North by the line of the Massachusetts Plantation, and so the South by the sea and in longitude as the line of the Massachusetts Colony running from East to West (that is to say) from the said Narrowganset Bay, on the East, to the South Sea, on the West part with the Islands thereunto adjoining together with all firm lands, soils, grounds, &c."

That the people of Rhode Island and Providence Plantations apprehending that the said Connecticut charter so bounded might justly swallow up great part of their territories and cut off all their pretensions to anything upon the Continent. This grievance they complained of soon after the said charter was obtained and it doth appear.

That John Winthorp and John Clark then agents for the respective Colonys of Connecticut and Rhode Island and Providence Plantations (notwithstanding the said charter to Connecticut) did in April, 1663, submit to arbitration what should be the boundaries between the said colonys, and it appears.

That the charter which was afterwards granted to Rhode Island in the 15th year of King Charles the 2nd takes notice of the aforesaid arbitration and have fixed their boundaries in the following manner (viz.) :—"All that part of our dominions in New England, in America, containing the Nayhautick Nanghiggansit *alias* Narraganset Bay and country and parts adjacent bounded on the West or Westerly by the middle or channel of a river there commonly known by the name of Pawtuck *alias* Pawcaytuck River, and so along the said river as the greater or middle stream thereof reacheth or lies up into the country northward unto the head thereof, and from thence by a straight line drawn due North until it meet with the South line of the Massachusetts Colony, and on the North or Northerly by the aforesaid South or Southerly line of the Massachusetts Colony or Plantation, and extending towards the East or Easterly 3 English miles to the East or North-East of the most Eastern or North-Eastern parts of the aforesaid Narrowgansetts Bay, as the said bay lieth or extendeth itself from the Ocean, on the South or Southerly unto the mouth of the

river which runneth towards the Town of Providence and from thence along the Easterly side or bank of the said river higher called by the name of Seacunck River unto the falls called Patuckett Falls, being the most Northerly line of Plymouth Colony, and so from the said falls into a strait line due North until it meet with the aforesaid line of the Massachussetts Colony and bounded on the South by the Ocean, and in particular the lands belonging unto the Towns of Providence, Patuzett, Warwick, Misquammacock, *alias* Pawcatuck, and the rest upon the main land in the tract aforesaid together with Rhode Island, Black Island, and all the rest of the islands and banks in the Narrogansett Bay, and bordering upon the coast of the tract aforesaid, Fishers Island only excepted, together with all firm lands, soils, &c. And further the said charter directs that the River Pawcatuck shall at all times hereafter be called and deemed to be the Narrogansett River mentioned for a boundary in the charter to Connecticut."

From which pretended grant of the Earl of Warwick and others to Rhode Island and Providence Plantation as also from the submission of the boundaries to arbitration by the agents of both Colonies so soon after the charter for Connecticut had been obtained, and by the charter to Rhode Island and Providence Plantations. It appears :

That King Charles the 2nd was surprised in his grant to Connecticut as to the boundaries, and that such arbitration and subsequent charter was intended to redress the grievance complained of by Rhode Island and Providence Plantation. It also appears :

That so lately as in 1703 by agreement between Commissioners appointed in October, 1702, in behalf of the said Colonys respectively for setting their boundaries. It was agreed that the western boundary between Rhode Island and Providence Plantation and Connecticut should for the future be formed for a line to be drawn from the mouth of Asshaway River where it falls into Paucatuck River, and thence extending north to the south line of the Massachusetts Bay. And it also appears :

That the Commissioners of Connecticut did actually meet and concur with those of Rhode Island in drawing the said line as a boundary between the two Colonys and which line is particularly described in green in the said map hereunto annexed.

And by the said appointment of the General Assembly of Connecticut in October, 1702, it plainly appears the General Assembly of Connecticut approved of the said Aritration of their agent, Winthorp, in 1663. They expressly providing in the said instrument "That nothing to be done by the Commissioners shall alter or change the property of any person's lands. But that property shall be saved according to the agreement of their late agent, John Winthorp, made in the year 1663, with Mr. Clark, agent for Rhode Island—which is a strong proof that the Government of Connecticut apprehend the pretensions of Rhode Island were just and equitable."

It also is very full in proof that the people of Rhode Island have been in possession of several tracts of land extending west from the Narroganset Bay to the red and green lines marked in the said map hereto annexed as the boundaries between the two Colonies, and that the taxes had been constantly paid for the same to Rhode Island Government only.

It also further appears that the Government of Connecticut have sent two letters on this occasion. one to the Lords Commissioners for Trade and Plantations, of the 28th day of October, 1723, and the other to Mr. Dummer, their agent here, in which letter to their agent they express themselves thus (vizt.) :—"The Government of Rhode Island is in the actual possession, as they themselves own, of the land which they claim, and we think belongs to us, we don't think fit to disturb them in that possession. It is not we but they that have made this complaint. If they would have sett still with all they desired their Lordships had not been troubled as they now are with this story." And in both their said letters the Government of Connecticut leave the bounds to be settled by His Majesty. Their letter to the Lords Commissioners of Trade running in these words (vizt.) :—"and we assired your Lordships that notwithstanding the priority of our charter to that of Rhode Island His Majesty's determination will on our part put a perpetual end to the controversy and confirm that peace between us and them which your Lordships have been pleased to express such a regard for." And their letter to their agent runs in these words (vizt.) :—"They doubt not but this matter (of the boundaries) will have a good issue one time or other, and even now if their Lordships would let them (the Rhode Island people) understand that they must be contented with their bounds set them in their own charter, and tell them how those bounds must be understood and taken, that would end the controversy, they would have no reason to complain. Nor should we give them the least trouble in the law, though our charter be prior to their's."

All which being considered by their Lordships, though the red line in the annexed map is what the Rhode Island people insist on as the true boundary between them and Connecticut according to their charter. Yet as the green line in the said annexed map was determined in 1703 to be the division line between the two Colonies by the Commissioners of each Government respectively appointed for that purpose : Their Lordships are humbly of opinion to advise Your Majesty, That you would be graciously pleased to signify your pleasure that the boundary line between the said two Colonies as described by the aforesaid green line drawn from the mouth of Ashaway River, where it falls into the Paucatuck River and thence extending north to the south line of the Massachusetts Bay may for ever hereafter be the settled boundary between the said two Colonies of Connecticut and Rhode Island and Providence Plantations.

VIRGINIA AND NORTH CAROLINA.

1726.

Page 282.

Council Register. No. 5. Geo. 1st. Sept. 1724 to May 1727.

Page 282 (89).

VIRGINIA *V.* NORTH CAROLINA.

EXTRACTS FROM COUNCIL REGISTER, No. 5, GEORGE I.

AT THE COURT AT KENSINGTON.

THE 4TH DAY OF NOVEMBER, 1726.

Present:

The King's Most Excellent Majesty.

Lord Chancellor,	Lord Viscount Lonsdale,
Lord President,	Lord Viscount Harcourt,
Lord Privy Seale,	Lord Carteret,
Lord Steward,	Mr. Speaker of ye House of Commons,
Lord Chamberlain,	Lord Finch, Comptroller of ye Household,
Duke of Newcastle,	Lieut-General of the Ordnance.
Earl of Sutherland,	
Lord Viscount Townshend,	

Virginia and North Carolina.

Representation from ye Board of Trade about setling their Boundrys.

Referred to ye Comittee.

Upon reading this day at the Board a representation from the Lords Commissioners for Trade and Plantations, dated the 31st of August last, relating to the settling the boundaries between the Colonies of Virginia and North Carolina: It is ordered by His Majesty in Council, That the said representation, together with a copy of some proposals thereto annexed, be, and they are hereby referred to a Committee of the Lords of His Majesty's Most Honorable Privy Council, to consider the same and report their opinion thereupon to His Majesty at this Board.

Council Register. No. 5. Geo. 1st. Sept. 1724 to May 1727.

Page 333 (89).

AT THE COUNCIL CHAMBER, WHITEHALL.

THE 22ND DAY OF FEBRUARY, 1726 (*sic* IN REGISTER).

By a Committee of the Lords of His Majesty's Most Honorable Privy Council for Plantation Affairs.

Present:

Archbishop of York,	Lord Viscount Townshend,
Lord President,	Lord Viscount Torrington,
Lord Privy Seale,	Lord Bishop of London.
Duke of Newcastle,	

Virginia and North Carolina.

Committee Report for setling the boundarys between these Colonys.

In obedience to Your Majesty's Order in Council of the 4th of November last, referring to this Committee a representation from the Lords Commissioners for Trade and Plantations, concerning the boundarys between the Colony of Virginia and North Carolina, the Lords of the Committee this day took the said representation into consideration and do find that there has long been a dispute between Your Majesty's subjects of these Colonys concerning the true boundarys—and that the Governors of the said Colonys having some time since agreed upon certain proposals for terminating the said dispute and for regulating the boundary for the future a copy of the said proposals have been communicated by the Lords Commissioners for Trade to the Lords Proprietors of Carolina, and to which proposals the said Lords Proprietors have lately given their assent—and as the regulations intended by the said proposals are recommended by the said Lords Commissioners for Trade as tending for Your Majesty's service:—The Lords of the Committee have no objection to Your Majesty's signifying your orders to the Governors of Virginia to settle the boundarys in conjunction with the Governor of North Carolina agreeable to the said proposals a copy whereof is hereunto annexed:

Memo.—These proposals were annexed to the foregoing report.

Proposals for determining the controversy relating to the bounds between the Governments of Virginia and North Carolina most humbly offered for His Majesty's Royal approbation and for the consent of the Right Honorable the Lords Proprietors of Carolina.

Forasmuch as the dispute between the said two Governments about their true limits continue still, notwithstanding the several meetings of the Commissioners and all the proceedings of many years past, in order to adjust that affair, and seeing no speedy determination likely to ensue, unless some medium be found out in which both parties may incline to acquiesce: Wherefore both the underwritten Governors having mett and considered the prejudice done both to the Kings and the Lords Proprietors' interests, by the continuance of this contest, and truly endeavouring at a decision which they judge comes nearest to the intention of the Royal Charter granted to the Lords Proprietors, do with the advice and consent of their respective Councils, propose as followeth:—

That from the mouth of Carrathick River or Inlet and setting the compass on the North Shoar thereof, a due west line be run and fairly marked, and if it happen to cut Chowan River between the mouths of Nottoway River and Wiccons Creek then shall the same direct course be continued towards the mountains and be ever deemed the sole dividing line between Virginia and Carolina.

That if the said west line cuts Chowan River to the southward of Wiccon Creek, then from that point of intersection the bounds shall be allowed to continue up the middle of the said Chowan River to the middle of the entrance into the said Wiccon Creek and from thence a due west line shall divide the said two Governments.

That if the said west line cuts Blackwater River to the northward of Nottoway River then from that point of intersection the bounds shall be allowed to continue down the middle of the said Blackwater River to the middle of the entrance into the said Nottoway River, and from thence a due west line shall divide the said two Governments.

That if a due west line shall be found to pass through islands or to cut out small slips of land, which might much more conveniently be included in the one province or other by natural water bounds, In such case the persons appointed for running the line shall have power to settle natural bounds provided the Commissioners on both sides agree thereto, and that all such variations from the west line be particularly noted in the maps or platts which they shall return to be put upon the records of both Governments.

All of which is humbly submitted by

(Signed) CHARLES EDEN.
A. SPOTSWOOD.

AT THE COURT AT ST. JAMES'S.

Council Register.
No. 5.
Geo. 1st.
Sept. 1724
to
May 1727.

THE 28TH DAY OF MARCH, 1727.

Page 338
(89).

Present:

The King's Most Excellent Majesty.

Lord Archbishop of Canterbury,	Earl of Marchmont,
Lord Chancellor,	Earl of Stair,
Lord Archbishop of York,	Lord Viscount Townshend.
Lord Privy Seal,	Lord Viscount Lonsdale,
Lord Chamberlain,	Lord Viscount Cobham,
Duke of Argyle,	Lord Viscount Falmouth,
Duke of Bolton,	Lord Viscount Harcourt,
Duke of Montrose,	Lord Bishop of London,
Duke of Kent,	Lord Carteret,
Duke of Newcastle,	Mr. Treasurer,
Duke of Ancaster,	Lord Finch Comptroller,
Earl of Berkeley,	Lord Chief Justice Raymond,
Earl of Sutherland,	Mr. Vice-Chamberlain,
Earl of Findlater,	Lieut.-General of the Ordnance.
Earl of Loudoun,	

Virginia and North Carolina.

Order for setling their boundarys according to the proposals entered page 334.

WHEREAS it hath been represented to His Majesty at this Board, that for adjusting the disputes which have subsisted for many years past, between the Colonies of Virginia and North Carolina concerning their true boundaries, The late Governors of the said Colonies did some time since agree upon certain proposals for regulating the said boundaries for the future—to which proposals the Lords Proprietors of Carolina have given their assent. And whereas the said proposals were this day presented to His Majesty as proper for his Royal approbation—His Majesty is thereupon pleased with the advice of his Privy Council to approve of the said proposals (a copy whereof is hereunto annexed) and to order, as it is hereby ordered, that the Governor or Commander in Chief of the Colony of Virginia, do settle the said boundaries in conjunction with the Governor of North Carolina, agreeable to the said proposals.

RHODE ISLAND AND MASSACHUSETTS.
1734.

RHODE ISLAND AND MASSACHUSETTS.

Council Register. No. 4. Geo. 2nd. Aug. 1st 1734 to Sept. 23rd 1736.

Page 49 (93).

EXTRACTS FROM COUNCIL REGISTERS NOS. 4, 5, 6, 7, 8, 9 AND 10, GEORGE II.

AT THE COURT AT ST. JAMES'S.

THE 19TH OF DECEMBER, 1734.

Present:

The King's Most Excellent Majesty.

Lord Chancellor,	Earl of Selkirk,
Lord President,	Earl of Hay,
Lord Privy Seale,	Viscount Torrington,
Lord Steward,	Lord Harrington,
Lord Chamberlain,	Lord Hardwicke,
Duke of Kent,	Mr. Chancellor of the Exchequer,
Duke of Newcastle,	Sir Charles Wills,
Duke of Dorset.	Henry Pelham, Esqr.,
Earl of Scarbrough,	Arthur Onslow, Esqr.,
Earl of Godolphin,	Sir Charles Wager.

Rhode Island.

Petition of the Governor and company praying the Eastern Bounds of that colony may be determined.

Referred to a Committee.

Upon reading this day at the Board the humble representation of the Governor and Company of His Majesty's Colony of Rhode Island setting forth that there has been a long controversy between them and the Province of Massachusetts Bay about the eastern bounds of the said Colony, and therefore humbly praying that His Majesty will be greatly pleased to determine the same, and that in the interim instructions may to given to prevent any violent attempts for the future by either party on the inhabitants of the lands in dispute. It is ordered by His Majesty in Councile that the said representation (a copy whereof is hereunto annexed) be and it is hereby referred to the Right Honourable the Lords of the Committee of Councile for Plantation Affairs to examine into the same and report their opinion thereupon to His Majesty at this Board.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 4. Geo. 2nd. Aug. 1st 1734 to Sept. 23rd 1736.

Page 80 (93).

THE 13TH OF JANUARY, 1734.

By a Committee of the Lords of His Majesty's Most Honourable Privy Council.

Present:

Lord President,	Viscount Torrington,
Lord Steward,	Lord Hardwicke,
Duke of Richmond,	Sir Charles Wager.
Duke of Dorset,	

Rhode Island.

Committee Order referring to the Board of Trade a representation of the Governor and company praying His Majesty will be pleased to determine the Eastern Bounds of that Colony.

His Majesty having been pleased to referr unto this Committee the humble Representation of the Governor and Company of His Majesty's Colony of Rhode Island setting forth that there has been a long controversy between them and the Province of the Massachusets Bay about the eastern bounds of the said Colony humbly praying that His Majesty will be graciously pleased to determine the same and that in the interim instructions may be given to prevent any violent attempts for the future by either party on the inhabitants of the land in dispute. The Lords of the Committee this day took the said Representation into their consideration, and are hereby pleased to referr the same to the Lords Commissioners for Trade and Plantations to examine into the same and report their opinion thereupon to this Committee.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 5. Geo. 2nd. Oct. 1st 1736 to Sept. 4th 1738.

Page 537 (94).

THE 19TH DAY OF MAY, 1738.

BY THE RIGHT HONOURABLE THE LORDS OF THE COMMITTEE OF COUNCIL FOR HEARING APPEALES FROM THE PLANTATIONS.

Present:

Lord President,	Lord Chief Justice Willes.
Lord Monson,	

Massachusets Bay and Rhode Island.

Order for delivering to the partys copies of the Board of Trades report relating to the settling the boundaries.

It is this day ordered by their Lordships that copys of the Report of the Board of Trade upon a Representation of the Governor and Company of Rhode Island relating to the settling the eastern boundarys of that Colony and the Province of Massachusets Bay be delivered to both partys.

AT THE COURT AT KENSINGTON,

Council Register.
No. 5.
Geo. 2nd.
Oct. 1st 1736
to
Sept. 4th 1738.

Pages 598, 599
(94).

THE 20TH DAY OF JULY, 1738.

Present:

The King's Most Excellent Majesty,

Archbishop of Canterbury,	Earl of Selkirk,
Lord Chancellor,	Lord Viscount Torrington,
Lord President,	Lord Harrington,
Lord Privy Seal,	Lord Delawar,
Duke of Devonshire.	Sir Charles Wills,
Duke of Newcastle,	Stephen Poyntz, Esqr.,
Earl of Abercorn,	Sir William Yonge.

Massachusets Bay.

Petition of the agent against issuing a Commission for settling the boundaries between that Province and Rhode Island.

Referred to a committee.

Upon reading this day at the Board the humble petition of Francis Wilks, Esqr., Agent for His Majesty's Province of the Massachusets Bay in New England humbly praying for the reasons therein sett forth that he may be heard by his Council against the issuing any new commission for ascertaining the eastern boundarys between that Province and the Colony of Rhode Island and that the settlement and determination thereof made in 1664 by Commissioners appointed by King Charles the Second may stand, and that the petition of the Governor and Company of Rhode Island may be dismissed. It is ordered by His Majesty in Council that the said petition (a copy whereof is hereunto annexed) be and it is hereby referred to the Right Honourable the Lords of the Committee of Council for Plantation Affairs to consider the same and report their opinion thereupon to His Majesty at this Board.

AT THE COUNCIL CHAMBER, WHITEHALL,

Council Register.
No. 6.
Geo. 2nd.
Oct. 1st 1738
to
Nov. 27th 1740.

Pages 12, 13, 14, 15
(95).

THE 1ST DAY OF NOVEMBER, 1738.

By the Right Honourable the Lords of the Committee of Council for Plantation Affairs.

Present:

Lord President,	Lord Monson,
Earl of Abercorn,	Mr. Speaker,
Lord Harrington,	Lord Chief Justice Willes.

Massachusets Bay and Rhode Island.

Committee report for appointing Commissioners to settle the boundaries and for security to be given by persons desiring to be heard against reports of the Board of Trade.

Your Majesty having been pleased by your Order in Council of the 19 of December, 1734, to referr unto this Committee the humble Representation of the Governor and Company of Your Majesty's Colony of Rhode Island setting forth that there has been a long controversy between them and the Province of the Massachusets Bay about the Eastern Boundarys of the said Colony, and humbly praying that Your Majesty would be graciously pleased to determine the same, and that in the interim instructions may be given to prevent any violent attempts for the future by either party on the inhabitants of the lands in dispute. The Lords of the Committee in obedience to Your Majesty's said Order of Reference did on the 13th of January following take the said representation into consideration and thought proper to referr the same to the Lords Commissioners for Trade and Plantations, who have reported to this Committee that they have been attended by the agents of the respective Colonys and their counsel and upon hearing what they had to offer on each side, it appeared to them, that this matter has been contested at different times ever since the year 1664, and that so lately as in the year 1733 both Provinces being sensible of the inconveniencys that might arise for want of a final settlement in this matter, did by their respective Acts of Assembly, each of them appoint three indifferent persons to decide the matter in question, with a power, if they could not agree, to name a seventh as an umpire between them. That these Commissioners accordingly met, but could neither agree in settling the boundarys nor in the choice of a seventh person, wherefore the said Lords Commissioners are of opinion, that the most effectual method of putting an end to this dispute will be by Your Majestys appointing and authorizing Commissioners to be chosen from out of the neighbouring Provinces in America, to meet within a limited time, and mark out the dividing line between the said Province of the Massachusets Bay and Rhode Island eastwards, and that in the meantime Your Majesty may be graciously pleased to send orders to the Governors of the respective Provinces, that the people may continue in the peaceable possession of their property without molestation on either side. That after the Lords of the Committee had received this report from the Lords Commissioners for Trade and Plantations, Francis Wilks, Esqr., Agent for the Province of the Massachusets Bay, presented a petition to Your Majesty in Council praying to be heard by his counsel against the determination of the Lords Commissioners for Trade and Plantations as set forth in the said report. And Your Majesty having been pleased by your Order in Council of the 20th of July last to referr the said petition to this Committee.

The Lords of the Committee this day proceeded to hear the said agent by his counsel, as likewise counsel for the Governor and Company of Rhode Island, and do agree humbly to report to Your Majesty as their opinion that the said petition of the Agent of the Massachusets Bay ought to be rejected, and that Your Majesty will be pleased to authorize Commissioners, to be appointed out of the neighbouring Provinces in America, to settle the said boundarys, and that Your Majesty will be pleased to order the Governors of the said Provinces respectively to take care that the people in the mean time do continue in the peaceable possession of their property without molestation on either side, according to what is proposed in the report of the said Lords Commissioners for Trade and Plantations.

And the said petition appearing to the Lords of the Committee to be frivolous and vexatious, and to have been preferred only with intent to delay and prevent the settling of the boundarys of the said Provinces. Their Lordships humbly conceive it may be necessary in order to prevent such frivolous and vexatious applications for the future which tend, not only to delay and interrupt the course of proceedings, but also to bring unnecessary expenses upon those who are obliged to defend themselves against such applications. That Your Majesty may be pleased to order that the Lords of the Committee of Your Majesty's most Honourable Privy Council for Plantation Affairs do not proceed upon any applications by petition or otherwise, praying to be heard against any determinations of the Lords Commissioners for Trade and Plantations upon any matters which have or shall be referred to them by Your Majesty in Council or by the Lords of the Committee for Plantation Affairs, upon which it shall appear that the said Lords Commissioners have heard the persons concerned, either by themselves, their counsel, or agents, unless such petitioner or petitioners or some person in his or their behalf do first enter into some sufficient security to pay such costs as shall be awarded by Your Majesty in Council thereupon and their Lordships do further humbly propose that Your Majesty may be pleased to order the same rule to be observed in all cases, which shall come before the said Committee of Council in consequence of any Commissions that may have been or shall hereafter be issued by order of Your Majesty in Council for settling or adjusting any boundarys or other special matters in dispute in any of Your Majesty's Colonys of Plantations in America.

AT THE COURT AT ST. JAMES'S,

Council Register.
No. 6.
Geo. 2nd.
Oct. 1st 1738
to
Mar. 27th 1740.

Pages 36, 37
(95).

THE 30TH OF NOVEMBER, 1738.

Present:

The King's Most Excellent Majesty,

Archbishop of Canterbury,	Earl of Abercorne,
Lord Chancellor,	Earl of Selkirk,
Lord President,	Lord Harvey,
Duke of Montague,	Lord Harrington,
Earl of Pembroke,	Mr. Speaker,
Earl of Grantham,	Sir Paul Methuen,
Earl of Cholmondley,	Horatio Walpole, Esqr.

Rhode Island and Massachusets Bay.

Upon reading at the Board a Report from the Right Honorable the Lords of the Committee of Council for Plantation Affairs dated the first of this instant in the words following viz:—

> Memd.—Here such part of the Committee Report as relates to the settling the boundarys between Rhode Island and the Massachusets Bay to be inserted at length as vide entd. Page 12.

Order for Commissioners to be chosen out of the neighbouring Colonys to settle the boundarys.

His Majesty this day took the said report into consideration, and was pleased with the advice of his Privy Council to approve thereof, and accordingly to order, as it is hereby ordered, that the said petition of Francis Wilks, Esqr., agent for the province of the Massachusets Bay, be rejected, and that Commissioners be chosen from out of the neighbouring provinces in America to meet within a limited time and mark out the dividing line between the said province of the Massachusets Bay and Colony of Rhode Island. And His Majesty is hereby further pleased to order that the inhabitants of the said provinces and Colony do in the meantime continue in the peaceable possession of their property without molestation on either side. Whereof the respective Governors of the said province of the Massachusets Bay and the Colony of Rhode Island for the time being, and all others whom it may concern, are to take notice and govern themselves accordingly.

Order for all Persons to give security who desire to be heard against determinations of the Board of Trade or of Commissioners directed by Orders in Council for settling boundarys or other special matters.

WHEREAS His Majesty this day took into consideration a report made by the Lords of the Committee of Council for Plantation Affairs, dated the first of this instant, relating to the appointing Commissioners for settling the boundarys between the province of the Massachusets Bay and the Colonys of Rhode Island, whereby it appeared that Francis Wilks, Esqr., agent for the Massachusets Bay, had petitioned to be heard by counsel against a report made thereupon by the Lords Commissioners for Trade and Plantations, although he had been fully heard by counsel before the said Lords Commissioners, and that the said Lords of the Committee found, upon hearing the said petition, that the same was frivolous and vexatious, and that it was preferred only with an intent to delay and prevent the settling the boundarys of the said provinces which have been in dispute ever since the year 1664. And His Majesty,

being desirous to prevent as much as may be such frivolous and vexatious applications for the future which tend not only to delay and interrupt the course of proceedings, but also to bring unnecessary expenses upon those who are obliged to defend themselves against such applications, doth therefore, with the advice of His Privy Council, judge it proper to order, as it is hereby ordered, that the Lords of the Committee of His Majesty's Most Honourable Privy Council for Plantation Affairs, do not proceed upon any applications, by petition or otherwise, praying to be heard against any determinations of the Lords Commissioners for Trade and Plantations, upon any matters which have or shall be referred to them by His Majesty in Council or by the Lords of the Committee for Plantation Affairs, upon which it shall appear that the said Lords Commissioners have heard the persons concerned either by themselves, their counsel, or agents, unless such petitioner or petitioners, or some person in his or their behalf, do first enter into some sufficient security to pay such costs, as shall be awarded by His Majesty in Council thereupon. And His Majesty doth hereby further order that the same rule be observed in all cases which shall come before the said Committee of Council, in consequence of any commissions that may have been or shall hereafter be issued by order of His Majesty in Council for settling or adjusting any boundaries or other special matters in dispute in any of His Majesty's Colonys or plantations in America.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register.
No. 6.
Geo. II.
Oct. 1st 1738
to
Mar. 27th 1740.

Page 53
(95).

THE 1ST DAY OF DECEMBER, 1738.

By the Right Honourable the Lords of the Committee of Council for the affairs of Jersey and Guernsey.

Present:

Lord President,
Earl of Pembroke,
Earl of Abercorne,
Lord Chief Justice Willes,
Earl of Cholmondeley,

Rhode Island and Massachusets Bay.

Order for the Board of Trade to consider of proper persons to be appointed Commissioners for settling the boundarys.

His Majesty having been pleased by His Order in Council of the 30th of last month to approve of a Report made by this Committee upon the petition of the Govr. and Company of Rhode Island about settling the boundarys between that Colony and the Province of the Massachusetts Bay, and to order that Commissioners be chosen from out of the neighbouring Provinces in America to meet within a limited time, and mark out the dividing line between the said Province of the Massachusetts Bay and Rhode Island eastward. The Lords of the Committee do therefore hereby order that the Lords Commissioners for Trade and Plantations do consider of, and lay before this Committee the names of such persons as they conceive proper to be appointed Commissioners for that purpose.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register.
No. 6.
Geo. 2nd.
Oct. 1st 1738
to
Mar. 27th 1740.

Page 72
(95).

THE 12TH DAY OF JANUARY, 1738.

By the Right Honorable the Lords of the Committee of Council for Plantation Affairs.

Present:

Lord President,
Earl of Pembroke,
Earl of Abercorn,
Earl of Ilay,
Earl FitzWalter,
Lord Monson,
Mr. Speaker,
Horatio Walpole, Esq.,
Sir William Yonge.

Rhode Island and Massachusets Bay.

Committee Report proposing persons to be Commissioners for setling the Boundarys.

Your Majesty having been pleased by your Order in Council of the 30th of November last to approve of a Report made by this Committee, proposing that Commissioners should be appointed for marking out and settling the dividing line between the Province of the Massachusetts Bay and Colony of Rhode Island eastward. The Lords of the Committee thereupon thought proper to direct the Lords Commissioners for Trade and Plantations to consider of fit persons to be appointed for that service who have reported to this Committee that the most proper persons in their opinion will be the five eldest councillors of the three neighbouring Provinces, viz.: Cadwallader Coldon, Abraham Vanhorn, Philip Livingston, Archibald Kennedy, and James De Lancey, Esqre., for the Province of New York; John Hamilton, John

Wells, John Reading, Cornelius Vanhern, and William Provost, Esqrs., for the Province of New Jersey; William Skene, William Shirreff, Henry Cope, Erasmus James Phillips, and Otho Hamilton, Esqrs., for the Province of Nova Scotia, which last-mentioned gentleman the said Lords Commissioners have substituted in the place of Major Paul Mascarino, who was formerly left out by Your Majesty on a like occasion, because he had an estate in the Province of Massachusetts Bay. The Lords of the Committee upon consideration hereof are humbly of opinion that it may be advisable for Your Majesty to approve of the aforementioned persons to be Commissioners for marking out and settling the boundarys between the said Province of the Massachusetts Bay and the Colony of Rhode Island eastward.

AT THE COURT OF ST. JAMES'S.

Council Register.
No. 6.
Geo. 2.
Oct. 1st 1738
to
Mar. 27th 1740.

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(95).

THE 17TH DAY OF JANUARY, 1738.

Present:

The King's Most Excellent Majesty.

Archbishop of Canterbury,	Earl of Selkirk,
Lord Chancellor,	Earl of FitzWalter,
Lord President,	Duke of Athol,
Lord Chamberlain,	Duke of Montague,
Duke of Bolton,	Duke of Newcastle,
Duke of Argyll,	Earl of Pembroke,
Earl of Essex,	Viscount Torrington,
Earl of Grantham,	Sir Charles Wills,
Earl of Cholmondeley,	Sir Charles Wager,
Earl of Abercorn,	Sir William Yonge.

Rhode Island and Massachusetts Bay.

Orders approving persons to be Commissioners for settling the Boundarys.

Upon reading at the Board a Report from the Right Honorable the Lords of the Committee of Council for Plantation Affairs, dated the 12th of this instant, in the words following, viz.:—

> Memod. Here the said Report proposing the names of persons to be appointed for settling the boundarys between Massachusetts Bay and Rhode Island, to be inserted at length as *vide* entered page 72.

His Majesty this day took the said report into consideration, and was pleased with the advice of His Privy Council to approve thereof, and to order as it is hereby ordered that the persons therein named be the Commissioners for marking out and settling the boundarys between the Province of the Massachusetts Bay and the Colony of Rhode Island eastward.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register
No. 7.
Geo. 2nd.
April 1st 1740
to
Aug. 7th 1741.

Page 46
(96).

6TH MAY, 1740.

By a Committee of the Lords of His Majesty's Most Honorable Privy Council for Plantation Affairs, &c.

Present:

Lord President,	Lord Chief Justice Willes,
Lord Sidney Beauclerk,	Sir William Yonge.
Lord Monson,	

Rhode Island and Massachusetts Bay.

Committee Order for the Board of Trade to draw heads of a Commission for settling the Boundarys.

The Lords of the Committee this day took into consideration the humble petition of the Governor and Company of His Majesty's Colony of Rhode Island and Providence Plantations relating to the issuing a Commission for settling the boundarys between that Colony and the Province of the Massachusetts Bay agreeable to the heads thereto annexed. And praying that the agent for the Massachusetts Bay may be required to attend to declare his objections (if any he hath) to all or any the clauses to be contained in such Commission, and that the whole charge of the Commission and the execution of it and of the Commissioners and of their clerks and officers may be ordered to be borne in equal moietys between the said Colony and Province. It is ordered by their Lordships that the said petition, together with the heads thereto annexed be, and they are hereby referred to the Lords Commissioners for Trade and Plantations who are to consider thereof and to hear the agents thereupon, and lay before this Committee a draught of such heads and clauses as they shall think proper to be contained in a Commission for the settling and adjusting the said boundarys.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 7. Geo. 2nd. April 1st 1740 to Aug. 7th 1741.

Page 132 (96).

26th June, 1740.

By the Right Honourable the Lords of the Committee of Council for hearing Appeals from the Plantations.

Present:

Lord President,
Earl of Abercorn,
Lord Monson,
Lord Sidney Beauclerk,
Lord Chief Justice Willes,
Sir William Yonge.

Massachusets Bay and Rhode Island.

Committee Order for delivering to the partys copys of the report of the Board of Trade with heads of a Commission for settling the boundarys.

It is ordered by their Lordships that copies of the Report of the Board of Trade, with heads of a Commission for selling the boundarys between the Province of the Massachusetts Bay and the Colony of Rhode Island eastward, be delivered to the partys.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 7. Geo. 2nd. April 1st 1740 to Aug. 7th 1741.

Pages 134 to 140 inclusive (96).

The 1st Day of July, 1740.

By the Right Honorable the Lords of the Committee of Council for hearing Appeals from the Plantations.

Present:

Lord President,
Earl of Abercorn,
Lord Sidney Beauclerk,
Lord Monson,
Lord Chief Justice Willes.

Massachusets Bay and Rhode Island.

Committee report with heads of a Commission for settling the boundarys.

His Majesty having been pleased by His Order in Council of the 17th of January, 1738, to approve of the following persons as proper to be appointed Commissioners for marking out and settling the boundarys between the Province of the Massachusetts Bay and the Colony of Rhode Island eastward, viz.:—

Cadwallader Coldon, Abraham Vanhorn, Philip Livingston, Archibald Kennedy, and James De Lancey, Esqrs., of the Province of New York; John Hamilton, John Wells, John Reading, Cornelius Vanhorn, and William Provost, Esqrs., of New Jersey; and William Skene, William Shirreff, Henry Cope, Erasmus James Philips, and Otho Hamiltotn, Esqrs., of the Province of Nova Scotia. And the agent for the Colony of Rhode Island having present a petition to this Committee humbly praying that a Commission may be prepared and past under the Great Seal of Great Britain, agreeable to the heads annexed to the said petition for settling the said boundarys, and for appointing the above-named persons to be the Commissioners for that purpose. The Lords of the Committee did thereupon think proper to refer the said petition and heads to the Lords Commissioners for Trade and Plantations to examine into the same, and to call the agents of the said Province and Colony before them, and hear them thereupon. And to prepare and lay before this Committee a draught of such heads as they should think proper to be contained in a Commission to be issued for these purposes. And the said Lords Commissioners having accordingly laid a draught of such heads before this Committee, their Lordships have considered thereof, and do agree to report to Your Excellencys as their opinion that a Commission may be prepared agreeable to the said heads which are hereunto annexed in order to be past under the Great Seal of Great Britain, and that the good purposes proposed by this Commission may not be frustrated by any failure in the execution thereof. The Lords of the Committee take leave to propose that circular letters should be wrote by the Lords Commissioners for Trade and Plantations to their respective Governors of New York, New Jersey, and Nova Scotia acquainting them with Your Excellency's intentions to issue such Commission, and directing them to inform the Commissioners, resident within their respective Provinces of the time and place intended to be appointed by the said Commission for the first meeting of the said Commissioners, and to recommend it strongly to such of the said Commissioners as are able to go and attend this duty. And to the end that all parties may be prepared to proceed before the Commissioners at their first meeting. The Lords of the Committee further propose that letters should be likewise wrote by the said Lords Commissioners for Trade and Plantations to the Governors of the Massachusetts Bay and Rhode Island to recommend to the respective Councils and Assemblys of the said Province and Colony to appoint two of their public officers residing in the said Province and Colony on either of whom or at whose place of abode any notices, summons, or final judgment of the said Commissioners may be served or left. And to send the names and places of abode of such officers to the said Commissioners at their first meeting, together with a plain and full state of their demands or pretensions in writing, describing where and in what places the boundarys between the said Province and Colony ought to begin and what courses and how far the same ought to run respectively. And to acquaint them that in case of their omission so to do the said Commissioners are empowered to proceed *ex parte.*

Draught of heads and clauses proper to be contained in a Commission for the settling and adjusting the boundarys between the Province of the Massachusetts and the Colony of Rhode Island.

Massachusetts Bay and Rhode Island.

Heads of a Commission for settling the boundarys.

1. Whereas a dispute hath been long subsisting between His Majesty's Province of the Massachusetts Bay and His Colony of Rhode Island in America relating to the Eastern Boundarys of the said Colony towards the said Province.

2. His Majesty therefore doth nominate, authorize, and appoint Cadwallader Colden, Abraham Vanhorn, Philip Livingston, Archibald Kennedy, and James De Lancey, Esqrs., of the Province of New York, John Hamilton, John Wells, John Reading, Cornelius Vanhorn, and William Provost, Esqrs., of the Province of New Jersey, and William Skene, William Shirreff, Henry Cope, Erasmus James Phillips, and Otho Hamilton, Esqrs., of the Province of Nova Scotia, or any five or more of them to be His Majestys Commissioners for settling, adjusting, and determining the boundarys of the said Colony eastwards in dispute as aforesaid.

3. His Majestys Will and Pleasure therefore is that the said Commissioners do repair by the first convenient opportunity to the Town of Providence, within the said Colony, being most conveniently situated for that purpose, and there hold their first Meeting on the First Tuesday in March, which shall be in the year of our Lord 1740–41, from which Day, and any future Days of Adjournment they may adjourn, to such time and times as may be most convenient for them.

4. That in case five of the Commissioners shall not be present on the said first Tuesday in March, 1740–41, or on any other day of adjournment, than such, or a majority of such of them as shall be present, shall and may adjourn the further execution of this Commission in manner aforesaid.

5. That at their first meeting they do make choice of one or more clerk or clerks to enter their minutes and proceedings, and at the first meeting, where five or more shall be present, that they do make choice of one or more skilful persons to prepare draughts or plans of the county or boundarys as there shall be from time to time occasion.

6. That they do administer to such clerks or other persons as they shall employ an oath (or if they shall be of the people called Quakers, an affirmation) for the due and faithful execution of their trusts.

7. That of the Commissioners present at any Meeting he who is first named in the list of Commissioners shall preside at such meeting, and shall issue out the necessary summons for such witnesses as either party shall require.

8. That the said Commissioners do use all convenient dispatch in this Affair.

9. That all determinations be made by a majority of the Commissioners who shall be present at the respective meetings, provided there shall be then present five or more of the said Commissioners.

10. That in case either the said Province of the Massachusetts Bay or the said Colony of Rhode Island shall neglect to send to the Commissioners at the first Day of Meeting of the Commissioners, the Names and Places of Abode of two of their public officers residing in the respective Province and Colony, on either of whom, or at whose place of abode any notice, summons, or final judgment of the said Commissioners may be served or left; and in case either the said Province or the said Colony shall neglect to send to the said Commissioners at the first day of meeting of the Commissioners a plain end and full state in writing of the demands or pretensions of the said Province and Colony respectively, where and in what places the boundarys of the said Colony eastwards ought to begin, and what courses, and with what variation, and in what manner, and how far the same ought to run (to the end that copys thereof may be mutually exchanged in order to prevent any unnecessary delay, and that each party may come fully prepared), then and in either of those cases the said Commissioners, or any five or more of them, to proceed *ex parte*.

11. That no witness or witnesses be allowed of by the Commissioners to give evidence but such as shall be sworn (or, being of the people called Quakers, shall take a solemn affirmation) before the Commissioners in open Court (which oath or affirmation the Commissioners, or any five or more of them, are hereby impowered to administer).

12. That all interrogatorys and questions which shall be put to such witnesses before the Commissioners shall be set down in writing, and that the whole of what such witnesses shall offer to the Commissioners shall also be set down in writing by the said clerk or clerks in the presence of the Commissioners and of the respective witnesses, and that the same be read over to and signed by the respective witnesses.

13. That the Commissioners shall appoint such time as they shall find reasonable within which all the witnesses on each side shall be produced to be examined.

14. That entrys be made of all Charters, grants, deeds, evidences, proofs, and plans received by the Commissioners in this affair, and also of all the Commissioners proceedings and resolutions throughout the same, and that such plans, maps, or draughts of the boundary lines as shall be agreed upon by the Commissioners be annexed to and made part of the Commissioners determination.

15. That when the Commissioners shall have made their final determination and signed the same, a copy thereof shall be forthwith sent to such publick officer or officers, as before mentioned, in the said Province and Colony respectively, together with notice of another meeting to be held by the Commissioners, at the distance of two months, or at such further reasonable time, not exceeding three calendar months, as the Commissioners shall appoint.

16. That at such future meeting the said Province and the said Colony respectively, or either of them, who shall find themselves aggrieved, may enter their Appeal to His Majesty in His Privy Council, with a declaration what parts of the determination of the Commissioners they respectively abide by or appeal from.

17. That if the said Province or the said Colony shall not enter their respective appeals or exception against such determination at such last meeting, then no appeal or exception shall be afterwards received or admitted from such of the partys who shall omit to enter their respective appeals or exceptions at such last meeting of the Commissioners And in case neither the said Province nor the said Colony shall then enter any appeal or exceptions the determination of the Commissioners (being confirmed by His Majesty in Council) shall be final and conclusive to both the said Province and Colony.

18. That the said Province and the said Colony be permitted to take out at their own respective expense copys of the whole proceedings, proofs, exhibits, plans and all other papers and writings in this affair to be attested by three or more of the Commissioners.

19. That the Commissioners do return a fair copy of the whole record attested by three or more of them to His Majesty in Council.

20. That the Charge of this Commission and of the carrying it into execution and of the Commissioners their clerks, surveyors, and officers be born and paid in equal moietys by the said Province and the said colony.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 7. Geo. II. April 1st 1740 to Aug. 7th 1741.

Pages 154–155 (96).

THE 10TH OF JULY, 1740.

Present:

Their Excellencys the Lords Justices.

Archbishop of Canterbury,	Viscount Torrington,
Lord Chancellor,	Earl of Pembroke,
Lord Steward,	Lord Delawar,
Lord President,	Lord Cornwallis,
Duke of Athol,	Mr. Speaker,
Earl of Abercorn,	Sir William Yonge.

Massachusetts Bay and Rhode Island.

Upon reading at the Board a report from the Right Honourable the Lords of the Committee of Council for Plantation Affairs, dated the 1st of this instant, in the words following, viz. :—

Memd.—Here the Committee report relating to the issuing a Commission for settling the boundaries between Massachusetts Bay and Rhode Island, to be inserted at length, as *vide* entd., page 134.

Order for the Attorney and Sollicitor General to prepare a Draught of a Commission for settling the Boundarys and for the Board of Trade to write to the Governors thereupon.

Their Excellencys the Lords Justices this day took the said report and heads into consideration, and were pleased with the advice of His Majesty's Privy Council to approve thereof, and to order as it is hereby ordered, that His Majesty's Attorney and Solicitor-General do prepare and lay before their Excellencys at this Board the draught of a Commission to be past under the Great Seal agreeable to the said heads (which are hereunto annexed). And that they do inset in the said draught such other clauses as may be necessary in a Commission of this nature, and as may tend to the better carrying their Excellencys' intentions in this behalf into execution. And their Excellencys are hereby further pleased to order that the Lords Commissioners for Trade and Plantations do write the circular and other letters to the respective Governors of His Majesty's Plantations as proposed by the said report.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 7. Geo. 2nd. April 1st 1740 to Aug. 7th 1741.

Page 185 (96).

THE 31ST OF JULY, 1740.

Present:

Their Excellencys the Lords Justices.

Archbishop of Canterbury,	Lord Chamberlain,
Lord Chancellor,	Lord Monson
Lord President,	Sir Robert Sutton,
Earl of Cholmondeley,	Henry Pelham, Esquire,
Earl of Abercorn,	Duke of Montagu,
Viscount Torrington,	Duke of Newcastle.
Lord Steward,	

Massachusetts Bay and Rhode Island.

Upon reading this day at the Board a report from His Majesty's Attorney and Solicitor General with the draught of a Commission to be passed under the Great Seal for marking out and setling the boundarys between the Province of the Massachusets Bay and the Colony of Rhode Island eastward. It is ordered by their Excellencys the Lords Justices in Council that the said report and draught of a Commission be and they are hereby referred to the Right Honourable the Lords of the Committee of Council for Plantation Affairs to consider the same, and report their opinion thereupon to their Excellencys at this Board.

Draught of a Commission for settling the Boundarys.

Referred to a Committee.

AT THE COUNCIL CHAMBER, WHITEHALL,

Council Register. No. 7. Geo. 2nd. April 1st 1740 to Aug. 7th 1741. Page 193 (96).

THE 13TH OF AUGUST, 1740.

By the Right Honorable the Lords of the Committee of Council for Plantation Affairs.

Present:

Lord President,
Earl of Abercorn,
Earl Fitz Walter,
Lord Monson.

Massachusets Bay and Rhode Island.

Committee Report on the Draught of a Commission for settling the boundarys.

Your Excellency having been pleased by your Order in Council of the 31st of last month to refer unto this Committee a report made by His Majesty's Attorney and Solicitor General, together with a draught of a Commission prepared by them in order to be passed under the Great Seal for marking out and settling the boundarys between the province of the Massachusets Bay and the Colony of Rhode Island eastwards—the Lords of the Committee this day took the said draught of a Commission into their consideration And do agree to report to your Excellencys as their opinion that the same is proper for your Excellency's approbation.

AT THE COUNCIL CHAMBER, WHITEHALL,

Council Register. No. 7. Geo. 2nd. April 1st 1740 to Aug. 7th 1741. Pages 197-8 (96).

THE 14TH DAY OF AUGUST, 1740.

Present:

Their Excellencys the Lords Justices.

Archbishop of Canterbury,
Lord Privy Seale,
Lord Steward,
Lord President,
Mr. Chancellor of the Exchequer,
Earl of Abercorn,
Earl FitzWalter,
Viscount Torrington,
Lord Monson,
Sir William Yonge.

Massachusets Bay and Rhode Island.

Draught of a Commission for settling the Boundarys. Appended. Memd. This Commission is entered in the Plantation Book.

Upon reading this day at the Board a report from the Right Honorable the Lords of the Committee of Council, upon considering the draught of a Commission prepared by His Majesty's Attorney and Solicitor-General for settling the boundarys between the Province of the Massachusets Bay and the Colony of Rhode Island eastward. And their Lordships offering as their opinion that the said draught of a Commission was proper for their Excellencys' approbation. Their Excellencys the Lords Justices were thereupon pleased with the advice of His Majesty's Privy Council to approve of the said draught of a Commission (which is hereunto annexed). And to order as it is hereby ordered that John Couraud and Andrew Stone, Esquires, secretarys to the Lords Justices, do cause a warrant to be prepared for their Excellencys' signature in order to pass the said Commission under the Great Seal of Great Britain.

AT THE COURT AT KENSINGTON,

Council Register. No. 8. Geo. 2nd. Oct. 1st 1741 to Sept. 29th 1743. Page 204 (97).

THE 29TH DAY OF JULY, 1742.

Present:

The King's Most Excellent Majesty.

Archbishop of Canterbury,
Lord President,
Lord Privy Seal,
Duke of Bolton,
Duke of Rutland,
Marquis of Tweesdale,
Earl of Pembroke,
Earl of Winchelsea,
Earl of Grantham,
Earl of Cholmondeley,
Earl of Wilmington,
Earl of Bath,
Viscount Lonsdale,
Lord Delawar,
Lord Bathurst,
Lord Monson,
Mr. Speaker,
Mr. Vice-Chamberlain,
Mr. Chancellor of the Exchequer,
Sir Charles Wager,
Sir William Yonge,
Sir John Norris,
Thomas Winnington, Esqr.,
George Wade, Esqr.

Rhode Island.

Appeals of the Governor and Company of that Colony against the Province of the Massachusets Bay relating to their boundarys. Referred to a Committee.

Upon reading this day at the Board the humble petition and appeale of the Governor and company of the English Colony of Rhode Island and Providence Plantations in new England in America from several particular parts of the determination of the Commissioners appointed by His Majesty to settle the boundarys of the said Colony eastwards with the Province of the Massachusets Bay. And humbly praying that a day may be appointed for hearing the said appeale, and that the particular parts of the said Commissioners' determination appealed from may be reversed, and such other determination made instead thereof as shall be agreeable to the true construction of the boundarys contained in the Royal Charter under which the petitioners claim. It is ordered by His Majesty in Council that the said petition and appeale (a copy whereof is hereunto annexed) be and it is hereby referred to the Right Honourable the Lords of the Committee of Council for hearing appeales from the plantations to hear the same and report their opinion thereupon to His Majesty at this Board.

AT THE COURT AT KENSINGTON,

THE 15TH DAY OF SEPTEMBER, 1742.

Council Register. No. 8. Geo. 2nd. Oct. 1st 1741 to Sept. 29th 1743.

Pages 235–6 (97).

Present:

The King's Most Excellent Majesty.

Archbishop of Canterbury,	Lord Carteret,
Lord Chancellor,	Mr. Vice-Chamberlain,
Duke of Richmond,	Mr. Chancellor of the Exchequer,
Duke of Newcastle,	Henry Pelham, Esqr.,
Earl of Winchelsea,	Thomas Winnington, Esqr.,
Earl of Wilmington,	George Wade, Esqr.
Lord Delawar,	

Massachusets Bay.

Appeale of that Province against the Colony of Rhode Island relating to their Boundarys.

Referred to a Committee.

Upon reading this day at the Board, the humble petition and appeale of His Majesty's Province of the Massachusets Bay, in New England, from the determination of the Commissioners appointed by His Majesty to settle the boundarys of the Colony of Rhode Island eastwards, with the said province of the Massachusets Bay and humbly praying that a day may be appointed for hearing the said appeale, and that the determination of the said Commissioners may be reversed, and such other determination made instead thereof, as shall be agreeable to the petitioners' claim exhibited before the said Commissioners. It is ordered by His Majesty in Council that the said petition and appeale (a copy whereof is hereunto annexed). Be and it is hereby referred to the Right Honourable the Lords of the Committee of Council for hearing Appeales from the plantations, to hear the same and report their opinion thereupon to His Majesty at this Board.

AT THE COUNCIL CHAMBER, WHITEHALL,

THE 6TH DAY OF NOVEMBER, 1744.

Council Register. No. 9. Geo. 2nd. Oct. 4th 1743 to Feb. 27th 1744.

Page 562 (98).

By the Right Honorable the Lords of the Committee of Council for Hearing Appeales from the Plantations.

Present:

Lord President,	Lord Chief Justice Willes,
Lord Sandys,	Sir John Rushout.

Rhode Island and Massachusets Bay.

Committee Minute adjourning the hearing of the Appeales of the said Province and Colony relating to their Boundarys.

The Lords of the Committee this day took into consideration the appeale of the Colony of Rhode Island against the province of the Massachusets Bay, and also the appeale of the province of the Massachusets Bay against the Colony of Rhode Island relating to their boundarys and having heard counsel in part their Lordships adjourned the further hearing of this matter to Tuesday, the 13th instant.

AT THE COUNCIL CHAMBER, WHITEHALL,

THE 13TH DAY OF NOVEMBER, 1744.

Council Register. No. 9. Geo. II. Oct. 4 1743 to Feb. 27 1744.

Page 583 (98).

By the Right Honorable the Lords of the Committee of Council for Hearing Appeales from the Plantations.

Present:

Earl of Pembroke,	Lord Chief Justice Willes.
Lord Sandys,	

Rhode Island and Massachusets Bay.

Committee Minute adjourning the hearing of the Appeales of the said Island and Colony relating to their Boundarys.

The Lords of the Committee this day proceeded in the hearing of the appeale of the Colony of Rhode Island against the Province of Massachusets Bay relating to the boundarys and likewise the appeale of the province of the Massachusets Bay against the Colony of Rhode Island relating to the boundarys and adjourned the further hearing thereof to Monday, the 26th instant.

AT THE COUNCIL CHAMBER, WHITEHALL,

THE 26TH OF NOVEMBER, 1744.

Council Register. No. 9. Geo. II. Oct. 4th 1743 to Feb. 27th 1744.

Page 591 (98).

By the Right Honorable the Lords of the Committee of Council for Hearing Appeales from the Plantations.

Present:

Earl of Pembroke,	Lord Chief Justice Willes,
Lord Sandys,	Sir John Rushout.

Rhode Island and Massachusetts Bay.

Committee Minute for adjourning the hearing of the appeales of that Island and Colony relating to their Boundarys.

The Lords of the Committee this day proceeded in the further hearing of the appeale of the Colony of Rhode Island against the Province of the Massachusetts Bay relating to the boundarys and likewise of the appeale of the Province of the Massachusetts Bay against Rhode Island relating to the boundarys and adjourned the further hearing thereof to another day.

Council Register.
No. 9.
Geo. 2nd.
Oct. 4th 1743
to
Feb. 27th 1744.

Pages 594–7
(98).

AT THE COUNCIL CHAMBER, WHITEHALL,

THE 11TH OF DECEMBER, 1744.

By the Right Honorable the Lords of the Committee of Council for Hearing Appeales from the Plantations.

Present:

Earl of Pembroke,
Lord Sandys,
Lord Chief Justice Willes,
Sir John Rushout.

Rhode Island and Massachusets Bay.

Committee Report upon the Appeales relating to the Boundarys.

Your Majesty having been pleased by your Order in Council of the 29th of July, 1742, to referr unto this Committee the humble petition and appeal of the Governor and company of the English Colony of Rhode Island and Providence Plantations in New England in America, from several particular parts of the determination of the Commissioners appointed by Your Majesty to settle the boundarys of the said Colony eastwards with the province of the Massachusetts Bay, and humbly praying that the particular parts of the said Commissioners' determination appealed from may be reversed and such other determination made instead thereof as shall be agreeable to the true construction of the boundarys contained in the Royal Charter under which the petitioners claim—And Your Majesty having been also pleased by another Order in Council of the 15th of September, 1742, to referr unto this Committee the humble petition and appeal of Your Majesty's province of the Massachusets Bay from every part of the said determination of the said Commissioners, and humbly praying that the same may be reversed and set aside, and that instead thereof Your Majesty will be graciously pleased to give such judgment and determination as shall be agreeable to the petitioners' claim exhibited before the said Commissioners. The Lords of the Committee in obedience to Your Majesty's said Orders of Reference have met several times and taken both the said petitions of appeal into their consideration and having examined into the proceedings of the said Commissioners, do find, that they pronounced their judgment or determination on the 30th of June, 1741, in the words following—vizt.

"The Court took into consideration the Charters, deeds and other evidences, claims, pleas, and allegations produced and made by each party referring to the controversy before them, and after mature advisement, came to the following resolutions:—That there is not any one evidence proving, that the water between the main land on the east and Rhode Island on the west, was ever at any time called Narraganset River. That though there be evidence that the place where the Indian called King Philip lived near Bristol was Pauconoket, and that another place near Swansey was called Sowams or Sowamsett, Yet no evidence has been produced of the extent of the Pauconoket country to Seaconk or Pautucket River as it runs to the line of the late Colony of the Massachusetts Bay; For though there be some evidence that the Indians at enmity with King Philip, or with other Indians in amity with him, lived on the west side of the said river, and that the Indians subject to King Philip, or in amity with him, lived on the east side of the said river, there is no evidence that all the Indians subject to, or in amity with King Philip lived in the Pauconolet country. That the province not having produced the Letters Patent constituting the Council of Plymouth, nor any copy thereof the recital of said Letters Patent in the deed from the Council of Plymouth to Bradford and his associates is not sufficient evidence against the King's Charter. That the Council of Plymouth being a corporation, could not create another corporation, and that no jurisdiction within the King's dominions in America can be held by prescription, or on the foot of prescription. That the determination of the boundarys of the Colonys of Rhode Island and New Plymouth by the King's Commissioners in the year 1664 appears to have been only a temporary order for preserving the peace on the borders of both Colonys without determining the rights and titles of either. Upon the whole nothing appears whereby the Colony of Rhode Island and Providence Plantations can be barred or hindered from extending their jurisdiction eastward towards the province of the Massachusetts Bay according to the true intent and meaning of their Charter. But some dispute having arisen between the partys, as to the true construction and meaning thereof, the Court is of opinion that the Narragansett Bay is, and extendeth itself from Point Judith on the west to Seaconet Point on the east, and including the islands therein, layeth and extendeth itself unto the mouth of the river which runneth towards the town of Providence, and that, as it so lies or extends, it has, and may be considered as having, one eastern side, as the eastern coast of the said bay, runs up northerly from Seaconet Point, and one other north-eastern side; from near Mount Hope to Bullocks Neck, as the said bay runs up north-westerly towards the town of Providence. And that the lands adjacent to the said north-eastern and eastern coasts, and included within the following lines, and the said bay, are within the jurisdiction of the Colony of Rhode Island, vizt.:—On the north-east side of the said bay, one line running from the south-west corner of Bullock's Neck, north-east three miles. One other line running from the north-east extremity of said line until it be terminated by a line three miles north-east from the north-eastermost part of the bay on the west side of Rumstick Neck. And one other line from the termination of the last line to the bay, at or near Towoset Neck, running so that it touch the north-east extremity of a line running three miles north-east from the north-east corner of Bristol Harbour. And on the eastern side of the said bay, one line from a certain point on the eastern side of the said bay opposite to the southermost part of Shawomet

Neck and four hundred and forty rod to the southwards of the mouth of Fall River running east three miles. One other line running from the eastermost extremity of the said line till it be terminated by the eastermost end of a line three miles east from the eastermost part of a cove in the said bay, which is to the southward of Nanequaket. And one other line from the termination of the last line to the sea, running on such course as to be three miles east from the eastermost part of the bay adjoining to Scitehawest, on Rhode Island. And that the said distances of three miles east and north-east are to be measured from high water mark. And this Court doth hereby settle, adjust, and determine, that the eastern boundary of the said Colony of Rhode Island and Providence Plantations, towards the Massachusetts Bay, is, shall be, and runs from a certain point (where a miridian line passing through Pautucket Falls, cuts the south boundary of the Colony of Massachusets Bay) south to Pautucket Falls, then southerly along the eastward side of Seacock River, and the river which runneth towards the town of Providence to the south-west corner of Bullocks Neck. Then north-east three miles, and then along the aforesaid lines running at three miles distance from the eastermost parts of the said bay, to the said bay at or near Towoset Neck. Then as the said bay runs to the southermost point of Showomat Neck, and then in a streight line to the aforesaid point opposite to the said neck, then east three miles distance from the eastermost parts of the said bay to the sea, all which lines are to be run by making the proper allowance for the variation of the magnetic needle from the miridian. And for the better understanding of the description of the lines before mentioned, the Court hath caused the boundary lines of the lands adjacent to the most eastern and north-eastern parts of the said bay, to be delineated on the map or plan of the said bay and countries adjacent now in Court, and the same are distinguished on the said map or plan, by A, B, C, D, E, F, G, H.

The Lords of the Committee having considered the whole matter, and heard all partys concerned therein by their counsel learned in the law, do agree humbly to report to Your Majesty, as their opinion, that the said judgment or determination of the said Commissioners should be affirmed, and both the petitions of appeal therefrom dismissed.

Council Register.
No. 10.
Geo. 2nd.
1st Mar. 1744
to
23rd July, 1746.

Pages 367–8
(99).

AT THE COURT AT ST. JAMES'S,

THE 27TH OF FEBRUARY, 1745.

Present:

THE KING'S MOST EXCELLENT MAJESTY,

Archbishop of Canterbury,	Viscount Torrington,
Lord President,	Lord Cornwallis,
Lord Privy Seal,	Lord Bathurst,
Duke of Bolton,	Lord Sandys,
Duke of Argyll,	Mr. Vice Chamberlain,
Duke of Newcastle,	Sir John Norris,
Earl FitzWalter,	Thos. Winnington, Esq.,
Earl of Harrington,	Sir John Rushout,
Viscount Cobham,	Geo. Dodington, Esq.

Massachusets Bay and Rhode Island.

Petition of the Agent of the Massachusets praying a rehearing of the Appeales in relation to the Boundarys. Refd. to a Committee.

Upon reading this day at the Board the humble petition of Christopher Kilby, Esq., Agent for His Majesty's Province of the Massachusets Bay in New England humbly praying for the reasons therein contained that His Majesty will be graciously pleased to order a plan transmitted to the Lords Commissioners for Trade and Plantations in the year 1720 by the Government of Rhode Island of the boundarys of that Colony, and also several Acts of Assembly of the Massachusets Bay for erecting new townships, and now laying amongst His Majesty's records, to be laid before His Majesty previous to His Majesty's taking the Report of the Lords of the Committee of Council of the 11th of December, 1744, relating to the boundarys, into His Royal consideration, and that thereupon His Majesty will be pleased to reverse the judgment of the Commissioners appointed to settle the boundarys of the 30th of June, 1741, and to affirm a judgment of the Commissioners appointed to settle the boundarys in 1664 and to order the great river called Narraganset to be the eastern boundary of Rhode Island agreeable to the claim of the said Province and the determination of the said first Commissioners in 1664 or else that His Majesty will be graciously pleased to issue a new Commission to review the determination of the said last Commissioners that so the said Province may have an opportunity of laying the said plan and Acts in evidence before them and which the petitioner submits as the more reasonable in regard the determination of the first Commissioners in 1664 is fully in favour of the said Province, so that at present there are two determinations of different Commissioners clashing with each other which the petitioner apprehends is the strongest reason possible for a Commission of Review, or that His Majesty will be graciously pleased to make such other order in the premises as His Majesty in His Royal wisdom shall think proper, and as the nature and circumstances of the case shall require. It is ordered by His Majesty in Council, that the said Petition (a copy whereof is hereunto annexed). Be and it is hereby referred to the Right Honorable the Lords of the Committee of Council for Plantation Affairs to consider the same and report their opinion thereupon to His Majesty at this Board.

Upon reading this day at the Board the humble petition of Richard Partridge, Agent for and on behalf of the Colony of Rhode Island and Providence Plantations humbly praying that a petition of the Agent of the Province of the Massachusets Bay against a Report of the Lords of the Committee of Council of the 11th of December, 1744, made upon the appeales of the said Province and Colony relating to the boundarys may not be countenanced or admitted to have any influence in putting any further stop to the said Report, but may be rejected as a precedent of the most dangerous consequence, and that the said Report may be laid before His Majesty in Council for His Royal pleasure, in the same manner as, and according to the constant course of proceedings in all other judicial appeales whatsoever. It is ordered by His Majesty in Council, that the said Petition (a copy whereof is hereunto annexed). Be and it is hereby referred to the right Honorable the Lords of the Committee of Council for Plantation Affairs (to whom the said Petition of the Agent of the Massachusets Bay stands referred) to consider the same and report their opinion thereupon to His Majesty at this Board.

Rhode Island and Massachusets Bay.

Petition of the Agent of Rhode Island praying a Confirmation of the Committee Report relating to the Boundarys between the Massachusets Bay and that Colony. Refd. to a Committee.

AT THE COUNCIL CHAMBER, WHITEHALL,

THE 21ST OF APRIL, 1746.

BY THE RIGHT HONORABLE THE LORDS OF THE COMMITTEE OF COUNCIL FOR PLANTATION AFFAIRS.

Council Register. No. 10. Geo. 2nd. 1st Mar. 1744 to 23rd July 1746.

Pages 451–4 (99).

Present:

Lord President,
Earl of Stair,
Lord Monson,
Lord Sandys,
Lord Chief Justice Willes,
George Dodington, Esq.

Your Majesty having been pleased by your Order in Council of the 27th of February last to referr unto this Committee the humble petition of Christopher Kilby, Esq., Agent for the Province of the Massachusets Bay in New England setting forth amongst other matters, that in 1664 within the same year that the Rhode Island Charter was granted a Royal Commission was issued by His then Majesty King Charles the Second for running the boundary line between the Colonys of New Plymouth and Rhode Island under which authority the Commissioners determined and run the boundary line in the manner which the said Province of the Massachusets Bay now contend for. That about the year 1730 some controversys arising in relation to the said boundarys another Royal Commission was issued in the year 1740 directed to certain gentlemen residing in America for settling the east and west bounds between the Province of the Massachusets Bay (of which the said Colony of New Plymouth was now become part) and the said Colony of Rhode Island, and the Commissioners under the Commission on the 30th of June, 1741, in the settling of the said boundarys varied from the determination of the said Commissioners in 1664 and instead of making the great river of water called Narragansett the boundary extended the Rhode Island claim beyond and over the said river on the east side thereof. That each Province appealed from this determination of the said Commissioners to Your Majesty in Council, the Province of the Massachusets Bay insisting on the said great river of water as the eastern boundary to Rhode Island agreeable to the first Commissioners' determination in 1664, and Rhode Island insisting on a much larger tract of land than the said last Commissioners thought fit to allow them. That both the said appeales came on to be heard (by reference from Your Majesty in Council) before the Lords of the Committee, and upon the 11th of December, 1744, their Lordships agreed to report as their opinion to Your Majesty that the said determination of the last Commissioners of the 30th of June, 1741, should be affirmed. But the said report not being as yet laid before Your Majesty, the petitioner humbly prays for the reasons contained in the said petition that Your Majesty would be graciously pleased to order a plan transmitted to the Board of Trade in 1720 by the Government of Rhode Island of the boundarys of that Colony and also several Acts of the Assembly of the Massachusets Bay for erecting new townships which now lye amongst Your Majesty's records, to be laid before you previous to the said report of the Lords of the Committee of Council of the 11th of December, 1744, and that thereupon Your Majesty would be pleased to reverse the judgment of the last Commissioners appointed to settle the boundarys of the 30th of June, 1741, and to order the great river called Narraganset to be the eastern boundary of Rhode Island agreeable to the claim of the said Province and the determination of the said first Commissioners in 1664, or else that Your Majesty would be graciously pleased to issue a new Commission to review the determination of the said last Commissioners, that so the said Province may have an opportunity of laying the said plan and Acts in evidence before them and which the petitioner submits as the more reasonable in regard the determination of the first Commissioners in 1664 is fully in favour of the said Province, so that at present there are two determinations of different Commissioners clashing with each other which the petitioner apprehends is the strongest reason possible for a Commission of Review or that Your Majesty will be graciously pleased to make such other order in the premises as Your Majesty shall think proper—And Your Majesty having been likewise pleased by your Order in Council of the same day to referr unto this Committee the humble petition of Richard Partridge, Agent for and on behalf of the Colony of Rhode Island and Providence Plantations setting forth, That there has been a dispute depending for a great length of time between the said Colony and the Province of the

Massachusets Bay and Rhode Island.

Committee Report for Dismissing the Petition of the Agent of the Massachusetts Bay praying a rehearing of the Appeales in relation to the Boundarys.

Massachusets Bay touching the Boundary line between them and after many fruitless attempts and heavy expenses to settle and adjust the same a Commission was issued under the Great Seal in the year 1740 appointing Commissioners to determine the said disputed line on the spot in New England which accordingly was done, and a return duly made thereof that both sides having appealed from the said Commissioners determination the said appeales came on and were solemnly heard by a Committee of the Lords of Your Majesty's Privy Council for several days when their Lordships agreed to report their opinion to Your Majesty for the affirmance of the said Commissioners' determination without any variation from the same at which hearings the Counsel for the Massachusets Bay had full liberty of urging every matter and of giving their Lordships all the light in the affairs which they thought fit, That the report of the Lords of the Committee was accordingly drawn up, but has not yet been laid (according to the constant method of proceeding) before Your Majesty in Council for your royal pleasure thereupon whereby this dispute of so great expense and of more than fourscore years continuance might at length be brought to a period and upon inquiry into the cause thereof the petitioner is informed that an application has been made by the Massachusets Bay to stop the said report, That the petitioner conceives such an application affects the common course of justice in matters judicially depending before Your Majesty in Council upon appeales from the Plantations and would be a precedent of the most dangerous consequence as it would make cause endless and render the determinations of the Lords of the Committee of no manner of import after so much time taken up therein, besides the grevious expense and inconvenience that the keeping open this matter would occasion to the said Colony of Rhode Island and therefore humbly praying that the aforementioned petition of the Agent of the Massachusetts Bay may not be countenanced or admitted to have any influence in putting any further stop to the said report of the Lords of the Committee of Council, but may be rejected as a precedent of the most dangerous consequence and that the said report may be laid before Your Majesty in Council for Your Royal pleasure in the same manner as, and according to the constant course of proceedings in all other judicial appeales whatsoever. The Lords of the Committee in obedience to Your Majesty's said orders of reference this day took both the said petitions into their consideration and were attended by counsel thereupon and think it proper on this occasion humbly to observe to Your Majesty that both the said Provinces were very fully heard in all they had to offer upon their appeales beforementioned from the determination of the said Commissioners at four several meetings of this Committee vizt. on the 6th, 13th and 26th of November, and the 11th of December, 1744, at which times full liberty was given to either side to lay all proper evidence before this Committee. And the Committee did thereupon agree in opinion that both the said appeales should be dismissed and that the determination of the Commissioners of the 30th of June, 1741, should be affirmed, and a report was accordingly drawn up on the said 11th day of December to be laid before Your Majesty in Council for Your Royal approbation; that the present petition of the Massachusets Bay is calculated with a view to induce Your Majesty to postpone Your Royal approbation of the report so made by this Committee for the final determination of this affair and by means thereof not only to keep alive the disputes that have already subsisted too long between the said Provinces, but at the same time to endeavour to introduce a new method of proceeding at this Board by admitting of rehearings or otherwise to have a Commission to review this matter after it had been so fully heard before this Committee and our opinion given thereupon. That as they could not produce any precedents of appeales being reheard before this Board (all attempts formerly made for that purpose having been constantly discountenanced as being attended with dangerous consequences). And as they did not lay any new matter of evidence before this Committee, their Lordships agree humbly to report to Your Majesty that they do abide by their former opinion, That the judgment or determination of the Commissioners appointed to settle the boundarys of the 30th of June, 1741, should be affirmed and both the petitions of appeals therefrom be dismissed.

AT THE COURT AT KENSINGTON.

THE 28TH DAY OF MAY, 1746.

Present:

The King's Most Excellent Majesty.

Archbishop of Canterbury,	Earl of Harrington,
Lord President,	Viscount Torrington,
Lord Privy Seal,	Lord Cornwallis,
Lord Steward,	Lord Bathurst,
Lord Chamberlain,	Lord Hobart,
Duke of Bolton,	Lord Monson,
Duke of Argyll.	Lord Sandys,
Duke of Newcastle,	Mr. Vice-Chamberlain,
Earl of Chesterfield,	Sir William Yonge,
Earl of Cholmondeley,	Sir John Norris,
Earl of Stair,	William Pitt, Esqr.

Council Register.
No. 10.
Geo. 2nd.
1st Mar. 1744
to
23rd July 1746.

Pages 492–6
(99).

Massachusets Bay.

Order dismissing a Petition of the Agent for rehearing a Cause between that Province and Rhode Island relating to the Boundarys.

Upon reading at the Board a Report from the Right Honourable the Lords of the Committee of Council, dated the 21st of last month, in the words following, vizt.:

MEMORANDUM.—Here the Committee report on the petition of the Agent of the Massachusetts Bay for rehearing a cause relating to their boundarys, and also upon a petition of the agent of Rhode Island against rehearing the said cause to be inserted at length, as *vide* entered page 451.

His Majesty this day took the said Report into consideration, and was thereupon pleased with the advice of His Privy Council to declare his approbation of the aforementioned Report, made by the Committee on the 11th December, 1744, for affirming the judgment or determination of the Commissioners appointed to settle the boundarys of the 30th of June, 1741, and for dismissing both the petitions of appeals therefrom. And His Majesty doth hereby order that the aforementioned petition of Christopher Kilby, Agent for the Province of the Massachusetts Bay, be and it is hereby dismissed this Board.

Massachusetts Bay and Rhode Island.

Order approving the Committee Report on the Appeales relating to Boundarys.

Upon reading at the Board a Report from the Right Honourable the Lords of the Committee of Council for hearing appeales from the plantations, dated the 11th of December, 1744, in the words following, vizt. :

"Your Majesty having been pleased by your Order in Council of the 29th of July, 1742, to refer unto this Committee the humble petition and appeale of the Governor and Company of the English Colony of Rhode Island and Providence Plantations in New England, in America, from several particular parts of the determination of the Commissioners appointed by Your Majesty to settle the boundarys of the said Colony eastwards with the Province of the Massachusetts Bay, and humbly praying that the particular parts of the said Commissioners' determination appealed from may be reversed, and such other determination made instead thereof, as shall be agreeable to the true construction of the boundarys contained in the Royal Charter under which the petitioners claim. And Your Majesty having been also pleased by another Order in Council of the 15th of September, 1742, to referr unto this Committee the humble petition and appeale of Your Majesty's Province of the Massachusetts Bay in New England from every part of the said determination of the said Commissioners, and humbly praying that the same may be reversed and set aside, and that instead thereof Your Majesty will be graciously pleased to give such judgment and determination as shall be agreeable to the petitioners' claim exhibited before the said Commissioners. The Lords of the Committee in obedience to Your Majesty's said Orders of Reference have met several times and taken both the said petitions of appeale into their consideration, and having examined into the proceedings of the said Commissioners do find that they pronounced their judgment or determination on the 30th of June, 1741, in the words following :—

"The Court took into consideration the charters, deeds, and other evidences, claims, pleas, and allegations produced, and made by each party referring to the controversy before them, and after mature advisement came to the following resolutions—That there is not any one evidence proving that the water between the mainland on the east and Rhode Island on the west was ever at any time called Narraganset River. That though there be evidence that the place where the Indian called King Philip lived near Bristol was called Pauconoket, and that another place near Swansey was called Sowams or Sowamsett, yet no evidence has been produced of the extent of the Pauconoket Country to Seaconk or Pautucket River, as it runs to the line of the late Colony of the Massachusetts Bay ; for though there be some evidence that the Indians at enmity with King Philip or with other Indians in amity with him lived on the west side of the said river, and that the Indians subject to King Philip, or in amity with him, lived on the east side of the said river, there is no evidence that all the Indians subject to or in amity with King Philip lived in the Pauconoket Country. That the Province not having produced the Letters Patent constituting the Council of Plymouth, nor any copy thereof, the recital of said Letters Patent in the deed from the Council of Plymouth to Bradford and his associates is not sufficient evidence against the King's Charter. That the Council of Plymouth, being a Corporation, could not create another Corporation, and that no jurisdiction within the King's Dominions in America can be held by prescription, or on the foot of prescription. That the determination of the boundarys of the Colonys of Rhode Island and New Plymouth by the King's Commissioners in the year 1664 appears to have been only a temporary order for preserving the peace on the borders of both Colonys without determining the rights and titles of either. Upon the whole nothing appears whereby the Colony of Rhode Island and Providence Plantations can be barred or hindered from extending their jurisdiction eastward towards the Province of the Massachusetts Bay according to the true intent and meaning of their Charter. But some dispute having arisen between the partys as to the true construction and meaning thereof. The Court is of opinion that the Narragansett Bay is and extendeth itself from Point Judith on the west to Seaconet Point on the east, and including the islands therein layeth and extendeth itself unto the mouth of the river, which runneth towards the Town of Providence, and that as it so lies or extends, it has and may be considered as having one eastern side as the eastern coast of the said bay runs up northerly from Seaconet Point, and one other north-eastern side from Mount Hope to Bullocks Neck as the said bay runs up northwesterly towards the Town of Providence, and that the lands adjacent to the said north-eastern and eastern coasts and included within the following lines and the said bay are within the jurisdiction of the Colony of Rhode Island, viz. :—On the northeast side of the said bay, one line running from the south-west corner of Bullocks Neck north-east three miles. One other line running from the north-east extremity of said line until it be terminated by a line three miles north-east from the north-

easternmost part of the bay on the west side of Rumstick Neck. And one other line from the termination of the last line to the bay at or near Towoset Neck running so that it touch the north-east extremity of a line running three miles north-east from the north-east corner of Bristol Harbour. And on the eastern side of the said bay one line from a certain point on the eastern side of the said bay opposite to the southernmost part of Shawomet Neck and four hundred and forty rod to the southwards of the mouth of Fall River running east three miles. One other line running from the easternmost extremity of the said line till it be terminated by the easternmost end of a line three miles east from the easternmost part of a cove in the said bay which is to the southward of Nanequaket. And one other line from the termination of the last line to the sea running on such course as to be three miles east from the easternmost part of the bay adjoining to Schitshawest on Rhode Island. And that the said distances of three miles east and north-east are to be measured from high water mark. And this Court doth hereby settle, adjust, and determine that the eastern boundary of the said Colony of Rhode Island and Providence Plantations towards the Massachusetts Bay, is, shall be, and runs from a certain point (where a meridian line passing through Pautucket Falls cuts the south boundary of the Colony of Massachusetts Bay) south to Pautucket Falls. Then southerly along the eastward side of Seaconk River and the river which runneth towards the Town of Providence to the south-west corner of Bullocks Neck. Then north-east three miles, and then along the aforesaid lines running at three miles distance from the easternmost parts of the said bay to the said bay at or near Towoset Neck. Then as the said bay runs to the southernmost point of Showomat Neck. And then in a straight line to the aforesaid point opposite to the said neck. Then east three miles, and then along the aforesaid lines running at three miles distance from the easternmost ports of the said bay to the sea. All which lines are to be run by making the proper allowance for the variation of the magnetic needle from the meridian. And for the better understanding of the description of the lines before mentioned. The Court hath caused the boundary lines of the lands adjacent to the said most eastern and north-eastern parts of the said bay to be delineated on the map or plan of the said bay and countries adjacent now in Court, and the same are distinguished on the said map or plan by A, B, C, D, E, F, G, H.

"The Lords of the Committee having considered the whole matter, and heard all partys concerned therein by their counsel learned in the law, do agree humbly to report to Your Majesty as their opinion, that the said judgment or determination of the said Commissioners should be affirmed, and both the petitions of appeale therefrom dismissed."

His Majesty this day took the said report into consideration, and was pleased with the advice of His Privy Council to approve thereof, and to order that the said judgment or determination of the said Commissioners be and it is hereby affirmed, and both the said petitions of appeale therefrom dismissed. Whereof the Governor or Commander-in-Chief of His Majesty's Province of the Massachusetts Bay, the Governor and Company of the Colony of Rhode Island and Providence Plantations for the time being, and all others whom it may concern, are to take notice and govern themselves accordingly.

PENN AND BALTEMORE.

1683.

RHODE ISLAND AND MASSACHUSETTS BAY.

[*Extracts from Council Registers Nos. 4, 5, 6, 7, 8, 9, and 10, George II.*]

PENN *V.* BALTIMORE,

1734.

[*Extracts from Council Register No. 4, George II., and 5 and 6, George III.*]

AT THE COURT AT ST. JAMES'S.

Council Register. No. 4. Geo. 2nd. Aug. 1st 1734 to Sept. 23rd 1736.

Page 50 (93).

THE 19TH OF DECEMBER, 1734.

Present:

The King's Most Excellent Majesty.

Lord Chancellor,	Earl of Selkirke,
Lord President,	Earl of Ilay,
Lord Privy Seale,	Viscount Torrington,
Lord Steward,	Lord Harrington,
Lord Chamberlain,	Lord Hardwicke,
Duke of Kent,	Mr. Chancellor of the Exchequer,
Duke of Newcastle,	Sir Charles Wills,
Duke of Dorset,	Henry Pelham, Esqr.,
Earl of Scarbrough,	Arthur Onslow, Esqr.,
Earl of Godolphin,	Sr. Charles Wager.

Pensilvania.

Petition of the Penns agst. Lord Baltimores Petition for a Grant of the three lower Countys. Refd. to a Committee.

Upon reading this day at the Board the humble petition of Richard Penn, Esqr., the youngest surviving son of Wm. Penn, Esqr., deceased, in behalf of himself and of his two elder brothers, John Penn and Thomas Penn, Esqrs., who are in Pensilvania, setting forth their right to the three lower countys upon Delaware Bay, in America, for a grant of which the Lord Baltimore hath lately petitioned His Majesty, and praying such relief as is therein mentioned. It is ordered by His Majesty in Council that the said petition, a copy whereof is hereunto annexed, be, and it is hereby referred to the Right Honorable the Lords of the Committee of Council for Plantation Affairs to consider the same, and report their opinion thereupon to His Majesty at this Board.

AT THE COURT AT ST. JAMES'S.

Council Register. No. 4. Geo. 2nd. Aug. 1st 1734 to Sept. 23rd 1736.

Page 73 (93).

THE 9TH OF JANUARY, 1734.

Present:

The King's Most Excellent Majesty.

Lord Chancellor,	Earl of Scarbrough,
Lord President,	Earl of Godolphin,
Lord Privy Seale,	Earl of Selkirke,
Lord Steward,	Earl of Ilay,
Lord Chamberlain,	Earl of Halifax,
Duke of Richmond,	Viscount Torrington,
Duke of Athol,	Mr. Chancellor of the Exchequer,
Duke of Newcastle,	Lord Chief Justice Eyre,
Duke of Dorset,	Henry Pelham, Esqr.,
Earl of Pembroke,	Sr. Charles Wager.

Pensilvania.

Petition of sevl. Quakers agst. Lord Baltimores Petition for a grant of the three lower Countys. Refd. to a Committee.

Upon reading this day at the Board the humble petition of the people called Quakers, whose names are thereunto subscribed in behalf of several thousand familys of Quakers, who are at this time inhabitants of the 3 lower countys of Newcastle, Kent, and Sussex, upon Delaware, in America, humbly praying for the reasons therein contained, that His Majesty will be pleased to permit them to have a copy of the petition lately presented by the proprietors of Mary Land for a grant of the said three countys, and also of the report that may be made thereon by the Board of Trade, and that the proprietors of Pensilvania who are now in that Province, and the inhabitants of the said three countys may have an opportunity in a reasonable time to be heard by themselves. It is ordered by His Majesty in Council that the said petition (a copy whereof is hereunto annexed) be, and it is hereby referred to the Right Honorable the Lords of the Committee of Council for Plantation Affairs, to consider the same, and report their opinion thereupon to His Majesty at this Board.

AT THE COURT AT ST. JAMES'S.

THE 12TH OF FEBRUARY, 1734.

Council Register. No. 4. Geo. 2nd. Augt. 1st 1734 to Sept. 23rd 1736.

Page 101 (93).

Present:

The King's Most Excellent Majesty.

Lord President,	Earl of Leicester,
Duke of Richmond,	Earl of Essex,
Duke of Athol,	Earl of Selkirke,
Duke of Kent,	Earl of Waldegrave,
Duke of Dorset,	Sr. Charles Wills,
Earl of Pembroke,	Stephen Poyntz, Esqre.

Maryland.

Report of the Board of Trade on Lord Baltimores Petition for a new grant of the three Lower Countys without the words Hactenus inculta. Refd. to a Committee.

Upon reading this day at the Board a report from the Lords Commissioners for Trade and Plantations, dated the 16th of last month, upon the humble petition of Charles Lord Baltimore, praying, in order to avoid some doubts that have formerly arisen concerning the extent of the charter granted to His Ancestor by King Charles the First of part of a peninsula in America, particularly described from the construction of the words *Hactenus inculta*, mentioned in the preamble of the said charter, that His Majesty would be graciously pleased by a further charter or letters patent to confirm to the petitioner, his heirs, and assignes, the whole of such part of the peninsula as is contained within the limits of the said charter, notwithstanding the words *Hactenus inculta* inserted in the preamble of the said former charter. It is ordered by His Majesty in Council that the said report (a copy whereof is hereunto annexed) be, and it is hereby referred to the Right Honorable the Lords of the Committee of Council for Plantation Affairs, to consider the same, and report their opinion thereupon to His Majesty at this Board.

AT THE COUNCIL CHAMBER, WHITEHALL.

THE 13TH OF FEBRUARY, 1734.

Council Register. No. 4. Geo. 2nd. Augt. 1st 1734 to Sept. 23rd 1736.

Page 106 (93).

By the Right Honourable the Lords of the Committee of Council for hearing Appeales from the Plantations.

Present:

Lord President,	Sr. Charles Wager.
Lord Hardwick,	

Maryland.

Ordered that copyes of the Board of Trade's Report on Lord Baltimores Petition for a new Grant of the three lower Countys be delivered to all Partys.

It is this day ordered by their Lordships that copies of the report of the Board of Trade on Lord Baltimores petition for a confirmation of a grant of lands in America be delivered to all partys.

AT THE COUNCIL CHAMBER, WHITEHALL.

THE 4TH DAY OF MARCH, 1734.

Council Register. No. 4. Geo. 2nd. Augt. 1st 1734 to Sept. 23rd 1736.

Page 110 (93).

By the Right Honourable the Lords of the Committee of Council for hearing Appeales from the Plantations.

Present:

Lord President,	Lord Chief Justice Eyre.
Lord Hardwick,	

Maryland.

Committee Order for hearing the Report of the Board of Trade on Lord Baltimores Petition for a new Grant of the three lower Countys to all Partys.

Upon a motion this day made to their Lordships, it is ordered that the report of the Board of Trade upon the petition of the Lord Baltimore for a confirmation of a grant of lands made to his ancestors in the reign of King Charles the First, together with two petitions against the same. The one in the name of Richard Penn in behalf of himself and his two elder brothers and the other in the name of the people called Quakers in behalf of their friends the inhabitants of the three lower countys on Delaware Bay be heard at the first meeting after Easter term of which all persons concerned are to take notice and come prepared to be heard thereupon by their Council at that time.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 4. Geo. 2nd. Augt. 1st 1734 to Sept. 23rd 1736.

Pages 157–8 (93).

THE 10TH DAY OF MAY, 1735.

By the Right Honourable the Lords of the Committee of Council for Plantation Affairs.

Present:

Lord President,
Lord Privy Seale,
Lord Steward,
Duke of Rutland,
Earl of Pembroke,
Earl of Scarbrough,
Lord Hervey,
Lord Hardwicke,
Mr. Speaker,
Sr. Charles Wager.

America.

Committee Report for adjourning the consideration of a Report made by the Board of Trade on the Petition of Lord Baltimore also of two Petitions of Richard Penn and the Quakers until the end of Michmass Term next.

Your Majesty having been pleased to referr unto this Committee a report made by the Lords Commissioners for Trade and Plantations upon the Petition of Charles Lord Baltemore praying for a grant of confirmation of the whole of such part of a Peninsula in America as is contained within the limits of the Charter granted to his ancestor in the reign of King Charles the First, notwithstanding the words *Hactenus inculta*, which are inserted in the recital of the said charter. And Your Majesty having been pleased likewise to referr unto this Committee two petitions, the one in the name of Richard Penn, Esqr., the youngest surviving son of William Penn, Esqr., deceased, in behalf of himself and his two elder brothers, John and Thomas Penn, Esqrs., now in Pensilvania, setting forth their right to the three lower countys of Newcastle, Kent, and Sussex, lying within and being contiguous to the said peninsula, and therefore praying to be heard against the confirming the said peninsula to the Lord Baltemore, and the other in the name of the people called Quakers in behalf of several thousand familys of Quakers, inhabitants of the said three lower countys, praying also to be heard against the confirming the said lands to the Lord Baltemore, The Lords of the Committee this day took the said report and petitions into their consideration, and were attended by counsel as well for the Lord Baltemore as the other petitioners, and it appearing that on the 10th of May, 1732, articles of agreement had been entered into between the Lord Baltemore and the said John Thomas and Richard Penn for adjusting the boundarys of the lands granted to them by their respective charters, which articles had not been carried into execution within the time thereby limited, but notwithstanding such lapse of time, the validity of the said articles being insisted on by and on the behalf of the said John Thomas and Richard Penn. The Lords of the Committee do agree humbly to report to Your Majesty as their opinion that the consideration of the said report and petitions should be adjourned until, the end of Michaelmas term next, in order to give an opportunity to the said John Thomas and Richard Penn to proceed in a Court of Equity to obtain relief upon the said articles of agreement so insisted upon by them according as they shall be advised, and that after the expiration of the said time either party should be at liberty to apply to the Committee of Council for Plantation Affairs, as the nature of the case may require.

AT THE COURT AT ST. JAMES'S.

Council Register. No. 4. Geo. 2nd. Augt. 1st 1734 to Sept. 23rd 1736.

Page 160 (93).

THE 16TH OF MAY, 1735.

Present:

THE KING'S MOST EXCELLENT MAJESTY.

Lord President,
Lord Chancellor,
Lord Privy Seal,
Lord Steward,
Lord Chamberlain,
Duke of Richmond,
Duke of Rutland,
Duke of Argyll,
Duke of Athol,
Duke of Ancaster,
Duke of Newcastle,
Duke of Chandos,
Duke of Dorset,
Earl of Pembroke,
Earl of Leicester,
Earl of Carlisle,
Earl of Selkirk,
Earl of Ilay,
Earl FitzWalter,
Viscount Lonsdale,
Viscount Torrington,
Lord Hervey,
Lord Hardwicke,
Mr. Speaker,
Mr. Comptroller,
Lord Chief Justice Eyre,
Sr. Paul Methuen,
Sr. Charles Wills,
Henry Pelham, Esq.

America.

Order approving Committee Report upon the Petition of Lord Baltimore and also upon two Petitions of Richd. Penn and Several Quakers.

Upon reading at the Board a report from the Right Honourable the Lords of the Committee of Council for Plantation affairs, dated the 10th of this instant, in the words following, viz. :—

Memod.—Here the said report relating to the Lord Baltemore and the Penns to be inserted at length, as *vide* entered page 157.

His Majesty this day took the said report into consideration, and was pleased with the advice of his Privy Council to approve thereof, and to order as it is hereby ordered that the consideration of the said report and petitions be adjourned until the end of Michaelmas term next, that the said John Thomas and Richard Penn may have an opportunity to proceed in a Court of Equity to obtain relief upon the said

articles so insisted upon by them, according as they shall be advised, and His Majesty doth hereby further order that after the expiration of the said time either party be at liberty to apply to the Committee of Council for Plantation Affairs, as the nature of the case may require, whereof all persons whom it may concern are to take notice and govern themselves accordingly.

AT THE COURT AT ST. JAMES'S,

Council Register. No. 5. Geo. 3rd. Augt. 1766 to Jan. 1768.

Page 368.

THE 26TH DAY OF JUNE, 1767.

Present:

THE KING'S MOST EXCELLENT MAJESTY.

Archbishop of Canterbury,	Earl of Harcourt,
Lord President,	Earl of Shelburne,
Duke of Grafton,	Viscount Townshend,
Duke of Queensberry,	Viscount Howe,
Lord Steward,	Viscount Barrington,
Earl of Huntingdon,	Viscount Clare,
Earl of Denbigh,	Viscount Villiers,
Earl of Litchfield,	James Stuart Mackenzie, Esq.,
Earl of Cholmondeley,	James Oswald, Esq.,
Earl of Marchmont,	Sir Edward Hawke.
Earl of Bristol,	

Maryland and Pensilvania.

Petition of the proprietors for a Confirmation of certain Articles of Agreement between them relative to the Boundaries of these provinces. Referred.

Upon reading this day at the Board the humble petition of the Right Honourable Frederick Lord, Baron of Baltimore, in the Kingdom of Ireland, true and Absolute Lord and Proprietatry of the Province of Maryland, and of Thomas Penn and Richard Penn, Esquires, true and Absolute Proprietaries of the Province of Pennsilvania, and Three Lower Counties of Newcastle, Kent, and Sussex on Deleware, in America, humbly praying that His Majesty will be graciously pleased to give His Royal allowance, ratification, and confirmation of certain articles of agreement entered into on the 10th of May, 1732, between Charles Lord Baltimore, deceased, father of the petitioner, the Lord Baltimore of the one part, and John Penn, deceased, and the petitioners, Thomas Penn and Richard Penn of the other part, in order to put an end to the controversies and disputes that have long subsisted touching the bounds and limits between the said Province of Maryland and the said Three Lower Counties, and likewise that His Majesty will be pleased to give his Royal allowance, ratification, and confirmation of an inrolled decree of the Court of Chancery of Great Britain of the 15th of May, 1750, of a subsequent order of the said Court of the 29th of March, 1751, of an indenture of agreement entered into between the present petitioners, bearing date the 4th of July, 1760, and of a decree of the said Court of Chancery of the 6th of March, 1762, and every article, clause, matter, and thing in them and each of them contained, and that the same may be for ever established as between the petitioners' proprietaries of the Provinces of Maryland and Pensilvania, and the Three Lower Counties of Newcastle, Kent, and Sussex on Delaware, in America. It is ordered by His Majesty in Council that the said petition (a copy whereof is hereunto annexed), be and it is hereby referred to the Right Honourable the Lords of the Committee of Council for Plantation Affairs to consider the same and report their opinion thereupon to His Majesty at this Board.

AT THE COUNCIL CHAMBER, WHITEHALL,

Council Register. No. 5. Geo. III. Augt. 1766 to Jan. 1768.

Pages 423-4.

THE 24TH DAY OF AUGUST, 1767.

BY THE RIGHT HONOURABLE THE LORDS OF THE COMMITTEE OF COUNCIL FOR PLANTATION AFFAIRS.

Present:

Archbishop of Canterbury,	Earl of Shelburne,
Lord President,	Viscount Falmouth.

Maryland and Pensilvania.

Petition of the proprietaries praying His Majesty's Confirmation of certain Articles of Agreement entered into between them. Referred.

His Majesty having been pleased to refer unto this Committee the humble petition of the Right Honourable Frederick Lord Baron of Baltimore, in the Kingdom of Ireland, true and absolute Lord and Proprietary of the Province of Maryland, and of Thomas Penn and Richard Penn, Esqrs., true and absolute proprietaries of the Province of Pensilvania, and Three Lower Counties of Newcastle, Kent, and Sussex, on Deleware in America, humbly praying that His Majesty will be graciously pleased to give his Royal allowance, ratification, and confirmation of certain articles of agreement, entered into on the 10th of May, 1732, between Charles Lord Baltimore, deceased, father of the petitioner, the Lord Baltimore of the one part, and John Penn, deceased, and the petitioners, Thomas Penn and Richard Penn of the other part, in order to put an end to the controversies and disputes that have

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1735.

long subsisted touching the bounds and limits between the said Province of Maryland and the said Three Lower Counties; and likewise that His Majesty will be pleased to give his Royal allowance, ratification, and confirmation of an enrolled decree of the Court of Chancery of Great Britain of the 15th of May, 1750, of a subsequent order of the said Court of the 29th of March, 1751, of an indenture of agreement entered into between the present petitioners bearing date the 4th of July, 1760, and of a decree of the said Court of Chancery of the 6th of March, 1762, and every article, clause, matter, and thing in them and each of them contained, and that the same may be for ever established as between the petitioners' proprietaries of the Provinces of Maryland and Pensilvania, and the Three Lower Counties of Newcastle, Kent, and Sussex on Delaware, in America. The Lords of the Committee in obedience to His Majesty's said order of reference, this day took the said petition into consideration, and are hereby pleased to refer the same (a copy whereof is hereunto annexed), to the Lords Commissioners for Trade and Plantations to consider thereof, and report their opinion thereupon to this Committee.

Council Register.
No. 6.
Geo. III.
1st Jan. 1768
to
1st May 1769.

Page 417.

AT THE COURT AT ST. JAMES.

THE 11TH DAY OF JANUARY, 1769.

Present:

THE KING'S MOST EXCELLENT MAJESTY.

Lord President,	Viscount Falmouth,
Duke of Grafton,	Viscount Weymouth,
Lord Steward,	Viscount Barrington,
Earl of Rochford,	Sir Edward Hawke.

Maryland and Pensilvania.

Whereas there was this day read at the Board a report from the Right Honourable the Lords of the Committee of Council for Plantation Affairs, dated the 22nd of last month, in the following words, viz.—

Order confirming certain Agreements and proceedings respecting the Boundaries of those Provinces.

Memorandum.—Here the Committee report on the petition of the proprietaries of Maryland and Pensilvania for His Majesty's confirmation of sundry proceedings respecting the boundaries of those provinces to be inserted at length, as *vide* entered page 395.

His Majesty, taking the said report into consideration, was pleased, with the advice of his Privy Council, to approve thereof, and doth hereby signify His Royal approbation of the said agreements and proceedings mentioned in the petition of the said proprietaries (a copy whereof is hereunto annexed) so far as the same concern the disputes formerly subsisting between the petitioners themselves, but His Majesty doth hereby declare that such approbation shall not be construed in any manner to diminish or affect His Majestys claim of right to the three lower counties of Newcastle, Kent, and Sussex, nor prejudice any prerogative power, property, title, or interest of His Majesty, his heirs, and successors, in or to the said territories, districts, or tracts of land or any part thereof, nor any estate or interest of any of the planters, proprietors, tenants, or occupiers of any lands, tenements, or hereditaments lying within the same, which the petitioners had not a right or power, by virtue of the respective Charters or grants under which they claim to bind or conclude. Whereof as well the proprietaries of the said provinces of Maryland and Pensilvania, as all others whom it may concern, are to take notice and govern themselves accordingly.

N.B. a copy of ye petition here referred to is entered. Page 581.

I, GEORGE FREDERICK WARREN, of the city of London, notary public by Royal authority duly admitted and sworn, DO HEREBY CERTIFY that I have carefully collated and examined with the copy recorded in an additional manuscript volume, 15487, kept at the British Museum, London, and indorsed, "Papers relating to the boundary line of Massachusetts and Connecticut 1735–1754," the annexed petition, which I certify agrees with such recorded copy in every respect.

Therefore full faith should be given to the said annexed petition in judicature and thereout.

London, the eighth day of July, One thousand nine hundred and ten.

G. F. WARREN.
Notary Public.

TO THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

The humble petition of WILLIAM BOLLAN, Esq., agent for Your Majesty's Province of the Massachusetts Bay, in America,

Most humbly sheweth:

That his late Majesty King James the First, by Letters Patent under the Great Seal of England, dated the 3rd of November in the 18th year of his reign, did grant to the Council established at Plymouth for the planting, ruling, ordering, and governing of New England in America and to their successors or assigns all that part of America lying and being in breadth from 40 degrees of northerly latitude from the equinoctial line to the 48th degree of the same northerly latitude inclusively, and in length of and within all the breadth aforesaid throughout all the main lands from sea to sea.

That the said Council, established at Plymouth by indenture under their common seal, dated the 19th of March, in the 3rd year of King Charles the First, granted and conveyed to Sir Henry Roswell and others, their heirs and assigns and their associates for ever, all that part of New England in America aforesaid which lies and extends between a great river there commonly called Monomack ats Merrimack and a certain other river there called the Charles River, being in the bottom of a certain bay there commonly called Massachusetts Bay, and also all and singular those lands and hereditaments whatsoever lying within the space of three English miles on the south part of the said Charles River, or of any and every part thereof, and also all and singular the lands and hereditaments whatsoever lying and being within the space of three English miles to the southward of the southernmost part of the said bay called Massachusetts Bay, and also all those lands and hereditaments whatsoever which lye and be within the space of three English miles to the northward of the said river called Monomack ats Merrimack or to the northward of any and every part thereof, and all lands and hereditaments whatsoever lying within the limits aforesaid north and south in latitude and in breadth and in length and longitude of and within all the breadth aforesaid throughout the main lands there from the Atlantick and western sea and ocean on the east part to the south sea on the west part.

That His said Majesty King Charles the First, by his Letters Patent, under the Great Seal, dated the 4th of March in the 4th year of his reign, did grant and confirm to the said Sir Henry Roswell and others, their heirs and assigns, all that said part of New England in America lying and extending between the bounds and limits in the said indenture expressed, and His said Majesty did by said Letters Patent further give and grant unto the said Sir Henry Roswell and others, their heirs and assigns, all that said part of New England in America which lies and extends between a great river there commonly called Monomack ats Merrimack River and a certain other river there called Charles River, being in the bottom of a certain bay there commonly called Massachusetts Bay, and also all and singular those lands and hereditaments whatsoever lying within the space of three English miles on the south part of the said river called Charles River, or of any or every part thereof, and also all and singular the lands and hereditaments whatsoever lying and being within the space of three English miles to the southward of the southernmost part of the said bay called Massachusetts Bay, and also all those lands and hereditaments whatsoever which lie and be within the space of three English miles to the northward of the said river called Monomack ats Merrimack, or to the northward of any and every part thereof, and all lands and hereditaments whatsoever lying within the limits aforesaid north and south in latitude and in breadth and in length and longitude of and within all the breadth aforesaid throughout the main lands there, from the Atlantick or western sea and ocean on the east part to the south sea on the west part, and by said Letters Patent the said Sir Henry Roswell and others were created and made a body corporated by the name of the Governor and company of the Massachusetts Bay in New England, with power to make laws and pass grants and all other usual powers in grants of this kind.

That the said Governor and Company of the Massachusetts Bay, by virtue of the said Letters Patent, settled a colony of English in the said parts of America and many good subjects of this Kingdom, encouraged and invited by the said Letters Patent, transported themselves and their effects into the same, whereby the said plantation became very populous, and divers counties, towns, and places were created, erected and made by the said Governor and Company.

That in Trinity term in the 36th year of King Charles the Second a judgment was given in the Court of Chancery at Westminster upon a *scire facias* that the said Letters Patent of the 4th of March, in the 4th year of King Charles the First, should be vacated.

That upon the humble application of the then Agent for the said province of the Massachusetts Bay their late Majestys King William and Queen Mary, by Letters Patent, dated the 7th of October, in the third year of their reign, did will and ordain that the territories and colonies commonly called or known by the name of the Colonies of the Massachusetts Bay and Colony of New Plymouth, the province of Main, the territory called Accada or Nova Scotia, and all that tract of land lying between the said territories of Nova Scotia and the said province of Main should be erected, united, and incorporated into one real province by the name of Their Majesties' province of the Massachusetts Bay in New England, and their said Majesties did by their said Letters Patent, for them, their heirs, and successors, give and grant unto the inhabitants of the said province of the Massachusetts Bay and their successors all that part of New England lying and extending from the great river commonly called Monomack ats Merrimack on the north part, and from three miles northward of the said river to the Atlantic or western sea or ocean on the south part, and all the lands and hereditaments whatsoever lying within the limits aforesaid and extending as far as the outermost points or promontories or land called Cape Cod and Cape Malabar, north and south, and in latitude, breadth, and in length and longitude of, and within all the breadth and compass aforesaid throughout the mainland there from the said Atlantick or western sea and ocean, on the east part towards the south sea, or westward as far as the colonies of Rhode Island, Connecticut, and the Narraganset Country, and also all that part and portion of main land beginning at the entrance of Piscataway Harbour, and so to pass up the same into the River of Newichwannock, and through

the same into the furthest head thereof, and from thence north-westward till 120 miles be finished, and from Piscataway Harbour's mouth aforesaid north-eastward along the sea coast to Sagadohock, and from the period of 120 miles aforesaid, to cross over land to the 120 miles before reckoned up into the land from Piscataway Harbour through Newichwannock River, and also the north half of the Isles of Shoals, together with the Isles of Capawock and Nantuckett, near Cape Cod aforesaid, and also the lands and hereditaments lying and being in the country or territory commonly called Accada or Nova Scotia, and all those lands and hereditaments lying and extending between the said country or territory of Nova Scotia and the said River of Sagadahock or any part thereof; and by the said Letters Patent it is expressly provided that it shall and may be lawful for the Assembly of the said province to make and pass any grant of lands lying within the bounds of the colonies formerly called the colonies of the Massachusetts Bay and New Plymouth and province of Main in such manner as heretofore they might have done by virtue of any form of charter or Letters Patent, which grants of land within the bounds aforesaid their said Majesties do, by the said Letters Patent, will and ordain to be and continue for ever of full force and effect without their said Majesties further approbation or consent.

That His late Majesty King Charles the 2nd, by Letters Patent, under the Great Seal of England, bearing date the 20th of April, in the 14th year of his reign, for himself, his heirs, and successors, constituted, created, and made John Winthrop, Esq., and others, of Connecticut, in New England, in America, a body politick and corporate by the name of Governour and Company of the English colony in Connecticut, in New England, in America, with power to call a general Assembly, and to ordain and establish laws for settling the forms of government and fit and necessary for the said plantation and inhabitants there; and his said Majesty, by the said Letters Patent, for himself, his heirs and successors, did give, grant, and confirm unto the said Governour and Company and their successors all that part of his dominions in New England in America bounden on the east by Narraganset River, commonly called Narraganset Bay, where the said river falleth into the sea, and on the north by the line of the Massachusetts Plantation, and on the south by the sea; and in longitude as the line of the Massachusetts Colony running from east to west, that is to say, from the said Narraganset Bay on the east to the south sea on the west part.

That long before the issuing the said Letters Patent to the said Colony of Connecticut, to wit, in the year 1642, the then Colony of Massachusetts Bay had their south line surveyed and stated by Messrs. Woodward and Saffery, two very eminent and approved artists, commencing three English miles on the south part of Charles River agreeable to the said charter 4 Car: 1 are carried on to a certain station on Con-, necticut River, called Risses House, which was always from that time accounted by the Massachusetts Colony the dividing line betwixt them and the settlement which had been made by the Connecticut people before the obtaining their said charter, and had made grants of townships up to the said dividing land and particularly of the townships of Woodstock, Summers, Suffield, and Enfield.

That by the said Charter afterwards granted by King Charles the 2nd, in 1662, to the Colony of Connecticut, the said Colony is bounded on the north by the south line of the Massachusetts Colony, and the Governor and Company of Connecticut some years after obtaining their said grant drew the said dividing line so run by the said Woodward and Saffery in 1642, where it touched on the colony of Connecticut into question as to the right running thereof, and had since contested the same, by reason whereof the grants of lands for townships as well as to particular persons bordering upon the said south line of the Massachusetts and the north line of Connecticut made by the respective Governments, and particularly the grants to the towns of Woodstock, Suffield, and Enfield, on the Massachusetts side, and the towns of Windsor and Simsbury, on the Connecticut side, were controverted, and several suits at law had arisen thereabout. For a friendly and neighbourly accommodation whereof, and compromising, final issuing, and determining all past disputes and controversies relating to the said divisional line, and for quieting the subjects of each of the said two Governments in their just rights and possessions, the said two Governments, on the proposal of the Connecticut Government, came to an agreement for appointing Commissioners on each side to survey the lands lying near the said line of division and to draw a map of the same to be laid before the Assembly of each Government in order to their coming into some method for fixing the said line and putting an end to the controversies relating thereto.

That Commissioners were accordingly appointed who attended the said service and prepared and signed two maps of the said line and lands, one of which was transmitted to the Assemblies of each Government.

That hereupon Commissioners were, in May, 1713, appointed by Act of Assembly of each Government to fix and settle the boundary line between the said two Governments and secure and establish all properties in lands bordering on the line, and putting an end to all strifes and controversies relating thereto; and by the said Acts, and particularly by the Connecticut Act, it is enacted that whatsoever agreement the said Commissioners, on the behalf of the Government of Connecticut, should conclude with the Commissioners of the Massachusetts Government, and perfect under their hands and seals, should for ever thereafter be held good and firm on the behalf of the Connecticut Government.

That on the 17th of June, 1713, the Commissioners on both sides met, when the Connecticut Commissioners presented some preliminary instructions to be considered and agreed upon previous to their proceeding upon the divisional line, touching which the Massachusetts Commissioners desired to have recourse to their principals to advise thereon against their next meeting.

That at the next meeting of the Commissioners, on the 19th of the said June, it was proposed that the town of Woodstock, granted and established by the Government of the Province of Massachusetts Bay, should entirely remain within the jurisdiction of that Government according to their grants, with the right and profits of the lands, and that the town of Enfield, planted and established by the Government of the Province of the Massachusetts Bay, should also entirely remain within the jurisdiction of that Government according to their grant, and to be bounded as specified in the proposal.

That on the 22nd of said June it was proposed that the divisional line betwixt the two Governments should take its commencement from the ancient station of Woodward and Saffery, and that a west line should run from thence as directed by the charter, and that as it was proposed on the part of the Massachusetts that the several towns of Woodstock and Enfield, erected and established by that Government, be preserved entire as to jurisdiction according to their several grants, so also the towns of Windsor and Simsbury on the east side of Connecticut River should extend northward to the bounds of Enfield, and that the interfering betwixt the towns of Windsor and Simsbury on the west side of the river on the part of Connecticut and the town of Suffield on the part of the Massachusetts be further considered.

That on the 24th of said June the Commissioners of Connecticut made a proposal for adjusting the line between the town of Suffield on the part of Massachusetts and the town of Windsor on the part of Connecticut as a reasonable accommodation on both sides; and the particular boundaries so proposed are specified in the said proposal.

That on the 26th of said June it was proposed by the Connecticut Commissioners that the town of Simsbury should remain entire according to their grant, and that for what lands should be wanting to make the town of Suffield six miles square an equivalent should be made according as should be thereafter agreed—and it was agreed by all the Commissioners that a saving should be provided for particular towns.

That on the 29th of said June the Connecticut Commissioners suggested that upon further instructions from their Governour and Council they must insist upon the claim of Woodstock, or at least such part thereof as should fall to the southward of the line when run as proposed—and at another meeting, on the 3rd of July, 1713, the Massachusetts Commissioners informed the Connecticut Commissioners that upon advising with their Governour and Council they were instructed to insist upon reserving the town of Woodstock entire as to jurisdiction and property, which the Connecticut Commissioners declared they could not comply with as being contrary to their instructions till they heard further from their Governour and Council.

That on the 6th of said July upon conference and debate relating to the town of Woodstock which had been many years laid out and established by the Province of the Massachusetts Bay, vizt., in the year 1686, it was conceded and agreed by the Connecticut Commissioners that the town of Woodstock should be held and continued to the Government of the Massachusetts, both as to property and jurisdiction, and the proposal of the 26th of June referring to the town of Simsbury was agreed upon, and it was proposed that suitable persons to be appointed by the respective Governments should attend the stating, ascertaining, and settling of the line betwixt the two Governments, and also the line between the towns of Windsor and Suffield as was then conceded, and the Commissioners on both sides on the 13th of July, 1713, mutually signed and sealed an agreement for settling the said line, a copy of which your petitioner hath hereunto annexed, and to which he begs leave most humbly to refer and by which agreement (int. al) the town of Woodstock is to remain entire to the Government of the Massachusetts and the township of Simsbury to the Government of Connecticut, both as to property and jurisdiction, notwithstanding any intersection that may be made in either of them by the new running the line according to the other parts of the said agreement.

And about two miles and a half of the township of Suffield not having been improved by the inhabitants of Suffield is added to Simsbury, and an equivalent agreed to be made to Suffield and the boundaries betwixt Simsbury and Suffield are particularly described and agreed on.

And the town of Enfield granted and established by the Government of the Massachusetts is agreed to remain entirely within the jurisdiction of that Government, according to their grant.

And it is agreed that proper persons should be appointed by the respective Governments forthwith to run, adjust and determine the lines betwixt the towns of Windsor and Suffield and Windsor and Enfield, and betwixt Suffield and Simsbury in manner as by the said agreement is projected and agreed on.

It is likewise agreed that the several tracts of land lying near to or bordering upon the line formerly granted and laid out to particular persons by either of the said two Governments shall be held by such grantees their heirs and assigns for ever, according to the priority of their grants, although upon the new running or fixing of

the divisional line it should appear any of the said land did not lie within the jurisdiction of the Government by whom granted, and should be confirmed to such grantees and their heirs by the Government within which they fell, and that no persons should be prejudiced in their improvements.

And as the claims of many particular persons were not known to or could be determined by the Commissioners at that time, but necessarily required further time and notification to be made within each Government, it was therefore agreed that they should receive here and determine the claims of particular persons and settle the equivalence to be made as therein agreed for 12 months next, and the determination of the said Commissioners to be conclusive and final; and that no claims should be received after the expiration of the said 12 months without the special allowance and direction of the general Assemblies of the said Province and Colony.

It was further agreed that where any towns or particular persons by reason of any concessions thereby made or now stating or fixing of the said line should be cut short, or lessened in the quantity of their grants or that any lands or townships thereby consented to continue under the jurisdiction of the Government of which they were established should appear upon the now running and stating of the first mentioned West line to lie on the side of the other Government an equivalent should be made to such Government, towns or persons respectively of a like quantity of ungranted lands to be found in lieu thereof.

That this agreement thus maturely and solemnly entered into by the Commissioners on each side, and with the privity and approbation of each Government was accepted, approved of, and confirmed by each Government.

That pursuant to the provision made for that purpose by the said agreement public notice was duly given by each of the said Governments for all persons who had any claims to shew forth the same within the time limited, upon which two claims were entered, one by James Cornish for a tract of land of six mile square under a grant from one Toto, an Indian Captain, in the year 1686, and the other by John Elliot, Esquire, for 100 acres of land lying in the controverted part between Simsbury and Suffield, for both which provision was made by the Commissioners.

That the general Assembly of the said Province of the Massachusetts Bay on the 6th of August, 1713, and the Assembly of the said Colony of Connecticut on the 8th of October, 1713, appointed and impowered the Commissionres to run and state the partition line between the said two Governments pursuant to the said instrument of agreement of the 13th July preceding.

That on the 6th of November, 1713, the Commissioners made their return. That they had with the assistance of two surveyors who have likewise signed the return run and stated the said partition line, and in their return specify the particular metes and bounds by which they have done it.

That by the running of this line it appeared that 79,785 acres contained in grants which had been made by the Massachusetts Bay fell to the southward of the said line, and it was agreed at a meeting of the Governor of the said Province and Colony and the said Commissioners, on the 28th of December, 1713, that the Colony of Connecticut should have an equivalent granted them for the same agreeable to the return of the Commissioners of the 13th of July then last (and which equivalent lands were the next day agreed on and located), and it appearing that the said line intersected and took part of the towns of Springfield and Westfield, both which fell to the southward of the lines between the said two Governments, it was then mutually consented and agreed that the said several quantities of land should remain to the said townships of Springfield and Westfield, both within the Government of the Massachusetts, the intersection of the line in either of them notwithstanding, and on 31st of the same December the boundaries of the township of Suffield and Simsbury were finally settled and determined.

That by a subsequent report of the Riding Commissioners made to both Governments with a plan thereto annexed, of the several townships of Windsor, Simsbury, Suffield, Springfield, and Westfield, there was 20,008 acres more to be allowed to Connecticut as an equivalent for so much in the towns of Springfield, Wetsfield, and Suffield, lying to the southward of the said dividing line, which was agreed to and allowed, so that the whole equivalent to be allowed by the Province of the Massachusetts to the Colony of Connecticut was 105,793 acres.

That the Assembly of Connecticut, 13th October, 1715, passed an Act of Assembly whereby for a full disposition of the said equivalent lands they appointed Commissioners to sell the whole of the said 105,793 acres of equivalent land and for that purpose to execute conveyances thereof in the name and behalf of the said Colony and appropriated the purchase money to several publick uses.

That on the 11th of October, 1733, the said two Governments passed each of them an Act to perambulate and renew the said boundary line agreeable to the said settlement thereof in July, 1713, and the Commissioners appointed for that purpose in May and November, 1734, made their report to each Government of their having perambulated and renewed the said line accordingly, and which was a solemn recognition, renewal, ratification, and confirmation by both Governments of the said agreement and line settled and fixed by the said agreement of 13th July, 1713.

That from the year 1713 to the year 1747, a space of 34 years and upwards, each of the said two Governments continued in the quiet possession and enjoyment of the said boundary line, and of all the townships lands and premises as allotted by the said agreement, and particularly the said Province of the Massachusetts Bay continued in the full possession and enjoyment of the towns of Woodstock, Suffield, Enfield, and

Summers, and had always exercised the rights of jurisdiction over the same as part of and within and belonging to the said Province of the said Massachusetts Bay. But in the year 1747 the Governor and Company of Connecticut having formed a scheme to break in upon and interrupt the peace and quiet of the said two Governments by endeavouring to draw the said line and division so solemnly made between them in the year 1713, as aforesaid, and which had been so long acquiesced under by both Governments and the enjoyment and exercise of jurisdiction for such a length of time carried on and submitted to, the inhabitants of the said town were set up and prevailed upon to present a petition to the Assembly of Connecticut on the 8th of October, 1747, representing that the said towns were situate within the bounds of the Connecticut charter, and that by the said settlement of the dividing line between the two Governments made by Commissioners of each Government in the year 1713, it was agreed the said town should be and remain under the jurisdiction of the Province of the Massachusetts Bay though it appeared by the running the said line that the said towns were within the limits of Connecticut which determination the said petitioners alleged was made without their consent, and that by means thereof they had been and were still deprived of their rights and privileges to which they were entitled by the said charter; and that having suggested these matters to their respective Assemblies of both Governments, and been unsuccessful in their endeavours for redress they repeated their application to the Assembly of Connecticut praying that as they conceived they had a just right to the privileges and liberties of the Government of Connecticut the said agreement notwithstanding, that the said Assembly would acknowledge them to be in the Colony of Connecticut and allow them to be in the liberty and privileges thereof.

That upon this petition the Assembly of Connecticut appointed Jonathan Trumbull and two others to be Commissioners on behalf of the said Colony to meet with such Commissioners as should be appointed on the part of the said Province to hear the said petitioners on the matters of their complaint and report to the respective Governments what they should apprehend right to be done that so this affair might be amicably settled and justice therein be done to His Majesty's subjects; and the general Court of the said Province were desired to join therein, and His Honour the Governor was desired to transmit to His Excellency Governor Shirley a copy of the said resolve and request him to lay the same before the Assembly of the said Province for their consideration, and accordingly on the 28th of October, 1747, the Governor of Connecticut transmitted the said resolve to the Governor of the Massachusetts Bay desiring His Excellency to lay the same before the Assembly of that Province for their consideration, that justice might be done on the matters of the said complaint, and hoped those affairs might be settled in the best and most amicable manner.

That on the 17th of November, 1747, the Assembly of the Province of the Massachusetts came to the following resolutions, vizt. That it appeared to them that in the year 1713 the boundary line between the two Governments of the Massachusetts Bay and Connecticut was amicably and happily settled by Commissioners appointed for that purpose which settlement was ratified and confirmed by the Assembly of each Government, and by the said settlement it was agreed and determined that the towns of Simsbury and Windsor both as to the property and jurisdiction should remain entire to Connecticut, and that the towns of Woodstock, Suffield, and Enfield both as to property and jurisdiction should remain entire to the Massachusetts Bay, and the jurisdiction has been ever since peaceably exercised without complaints from the inhabitants till within a year past by the respective Governments accordingly. They were therefore unanimously of opinion that any pretended grievances of any of the inhabitants of the said towns of Woodstock, Suffield, Enfield, and Somers said to arise from said settlement having been made without their consent expressly signified can afford no just cause for reviving any controversy between the Colony of Connecticut and the said Province; and that it was not incumbent upon the Government of the Massachusetts to appoint Commissioners to meet with such Commissioners as were appointed by the Assembly of Connecticut to hear any complaints made by any of the inhabitants of the said towns respecting their being or remaining within the jurisdiction of the said Province. And the Assembly desired Governor Shirley to transmit a copy of the said resolves to the Governor of Connecticut in order to its being laid before the General Court of that Colony.

That on the 11th of May, 1749, the Assembly of Connecticut resumed the consideration of the said petition of the Institute of the towns of Woodstock, Suffield, Enfield, and Somers, and after reciting the said petition and that the petitioners had moved therein and urged that the said agreement in 1713 was made through mistake, and that the Government of Connecticut had received no equivalent for the jurisdiction over those towns, and that the same was never established by the Royal confirmation, and therefore though it was approved by the respective general Assemblies of both Governments, yet as to jurisdiction more especially it must be looked upon as null and void.

Whereupon the said Assembly declared their opinion that as the said agreement never had so it never ought to receive the Royal confirmation, and as the Governments could not give up exchange or alter their jurisdiction the said agreement so far as it respected jurisdiction was void, and thereupon declared that all the inhabitants which lived south of the line fixed by the Massachusetts Charter were within and had right to the privileges of the Connecticut Government, the said agreement notwithstanding. And for as much as there might be some uncertainty with respect to the beginning and running of the said line, it was necessary that measures should be taken to ascertain the same according to the Royal Charters to both the said Govern-

ments, therefore the said Assembly appointed four Commissioners or any three of them to join with Commissioners to be appointed by the Government of the Massachusetts to ascertain and affix the said line according to the said charters, and the same being approved of by both Governments that joint application should be made for the Royal confirmation thereof; and the Governor of Connecticut was desired to acquaint the Governor of the Massachusetts herewith, and request their joining in the matters aforesaid, and in case of the Massachusetts refusal, or in case the Commissioners did not agree then the Assembly further resolved that the Governor be desired to prepare and state the case, and send it to their Agent in Great Britain, and direct him to petition Your Majesty to appoint Commissioners to run and ascertain the divisional line between the said two Governments according to their charters, and which resolutions were transmitted by the Governor of Connecticut to the Governor and Assembly of the Province of the Massachusetts.

That on the 28th of June, 1749, the General Court of the Province of the Massachusetts Bay sent an answer by their Secretary to the Governor of Connecticut to be by him communicated to the Assembly acquainting them that the desire of the inhabitants of the towns of Woodstock, Suffield, Enfield, and Summers to be placed under the Connecticut Government proceeded principally from a view of being thereby freed from their proportion of a debt the Province had contracted for its own defence and the defence of the other Governments to which it served as a barrier, but they could never have imagined that the General Assembly of Connecticut would have openly supported and encouraged such an application in direct violation of a solemn treaty and settlement begun at the instance of Connecticut Government agreed on by Commissioners fully impowered for that purpose, and afterwards ratified and confirmed by the respective Acts of both Governments.

That the Connecticut Government alledging the towns of Woodstock, Enfield, Suffield, and Summers being within the bounds of Connecticut Charter the Governments had no power to alter the jurisdiction, could never be sufficient to justify their proposal for running the line anew. That all Acts and orders of the Massachusetts are constantly sent Home and laid before Your Majesty or Your Ministers, and the said several agreements so made between the two Governments were so transmitted, and therefore must be considered as having had the Royal confirmation, and if they had not been so transmitted, yet it was much more reasonable to believe that a line deliberately settled above 30 years ago should be more likely to obtain the Royal confirmation because of the many Acts in consequence of such settlement, than a line to be agreed on at that day, and that from Your Majesty's grace and goodness there could be no great room to doubt that where both Governments had agreed to a small alteration of the line of jurisdiction at the earnest desire and for the mutual convenience of both Governments, and of the inhabitants affected by it as was the case of the settlement between the two Governments, but that Your Majesty would most graciously be pleased to approve thereof, and if the Government of Connecticut were in doubt as to the validity of this settlement, it would have been more agreeable to their general character to have proposed a joint application to Your Majesty for your most gracious confirmation, than to have declared the same void, and appointed Commissioners to run the line anew. That if there had been a prospect of ever so great advantages to the Massachusetts Government by any alteration of the present boundary line by breaking thro' the solemn engagements of their predecessors, which in honour and conscience they were bound to observe such advantages would have no manner of influence upon them, nor could there be one instance of a contrary behaviour charged against that Province from its first incorporation to that day, and that whatever ill consequence might arise to either Government from this controversy they desired the Connecticut Government to remember that they were the first movers in it, and that the Massachusetts was perfectly disposed to preserve and maintain that peace and harmony which had from the beginning remarkably subsisted between them.

That the Magistrates of Connecticut have since the aforesaid resolution of the Assembly of Connecticut insisted on and taken upon them actually to exercise jurisdiction contrary to what they had ever done before in the towns of Woodstock, Suffield, and Enfield, and the Magistrates of the Province of the Massachusetts doing the same agreeable to what they have always hitherto done, the said townships are in the utmost confusion by the rights of jurisdiction being thus exercised by each of the said Governments, and the greatest disorders and confusions are introduced in the said towns, and a number of law suits commenced in each Government, tho' at the same time the Province of the Massachusetts Bay have not given any the least disturbance to those townships allotted by the said agreement to Connecticut.

That in order to prevent the aforesaid publick mischiefs and inconveniences and all others which must necessarily arise from and attend this double claim and exercise of jurisdiction over the said townships, your petitioner by directions from the General Assembly of the said Province of the Massachusetts Bay and as their Agent and for and on behalf of them most humbly lays the whole of the premises before Your Majesty for your Royal confirmation, and as the said boundary line or line of division between the said two Governments was so solemnly agreed upon, settled, and fixed between the said two Governments so long since as in the year 1713, and was approved of and acquiesced in by both Governments for upwards of 30 years, and as for the mutual convenience of both Governments it was agreed that where a line intersected the said townships they should notwithstanding belong to that Go-

vernment under which they were originally settled, and that an equivalent should be granted to each side for the lands which were thus taken from the one Government and added to the other, and as the right both of property and jurisdiction hath of such a length of time been enjoyed by each Government over the lands so mutually added by the one Government to the other, and in regard to the apparent mischiefs and inconveniences that must necessarily arise from the right of property being in one Government, and the right of jurisdiction in another, and as the settlement of the said boundaries and dividing line in the year 1713 were transmitted by the said Province of the Massachusetts Bay to Your Majesty's principal Secretary of State and the Right Honorable the Lords Commissioners of Trade and Plantations, and as this is a question of that nature that can only be properly determined by Your Majesty

Your petitioner as Agent to and for and on behalf of Your Majesty's said Province of the Massachusetts Bay most humbly prays Your Majesty that you will be most graciously pleased to inhibit and injoyn Your Majesty's said Colony of Connecticut from breaking in upon or disputing the said settlement of the boundary or divisional line so solemnly made both with regard to the right of property and jurisdiction between the said two Governments, and that Your Majesty will be most graciously pleased to give the said settlement in 1713 the additional sanction of Your Royal approbation and confirmation, and thereby quiet the present intestine disputes between the said two Governments, and thereby restore and settle perpetual peace and amity betweem them and the said several townships situate on the borders of each Government. Or that Your Majesty will be most graciously pleased to make such other and further order in the premises as the nature and circumstances of the case shall require, and as to Your Majesty in your most consummate wisdom shall see proper.

And your petitioner as in the strictest duty bound, shall ever pray, &c.

STATEMENT OF CASE IN MASSACHUSETTS AND CONNECTICUT.

1735.

MASSACHUSETTS AND CONNECTICUT BOUNDARY.

Petition of Massachusetts Agent to the Privy Council.

In British Museum.

Freshfields.

I, George Frederick Warren, of the City of London, Notary Public by Royal authority, duly admitted and sworn, do hereby certify that I have carefully collated and examined with the copy recorded in an additional manuscript volume 15487, kept at the British Museum, London, and endorsed "Papers relating to the Boundary Line of Massachusetts and Connecticut, 1735–1754," the annexed statement which I certify agrees with such recorded copy in every respect. Therefore full faith should be given to the said annexed statement in judicature and thereout.

London, the Eighth day of July, One thousand nine hundred and ten.

G. F. WARREN,
Notary Public.

MASSACHUSETTS AND CONNECTICUT BOUNDARY.

Statement of the Case on Connecticut Side

in British Museum.

A State of the Case in Controversy between the Province of the Massachusetts Bay and the Colony of Connecticut about the Line Dividing between the Two Governments.

No. 1. King Charles the First in the fourth year of his Reign granted Letters Patent to Sir Henry Rosewell, Sir John Young, &c., and to their associates, of the land lying in latitude and breadth from three miles north of the northermost part of Merrimack River to three English miles south of the southermost part of Charles River, and in longitude and length from the Atlantick on the east to the South Sea and the present Patent to the Province as far as it bounds on Connecticut is the same.

No. 2. In the year 1636 the planters settled in Connecticut, formed themselves into a Government, and granted and settled the towns of Hartford, Windsor, and Weatherfield, and stated the north bounds of Windsor at Kettle Brook.

No. 3. In the year 1637 the planters in Connecticut raised forces and conquered the Pequotts which were the most powerful nation of Indians in New England.

No. 4. In the year 1640, the planters in Connecticut purchased the territory of the Mohegans Indians of Uncase their Sachem.

N.B.—From these three last exhibits it appears that the planters in Connecticut had then formed themselves into a Government, and that the representation they made to King Charles the Second, 1662, was true, which His Majesty declares in his Charter had made an enlargement to his Dominions, and gives as one reason for granting the Charter to Connecticut.

The Massachusetts pretend that in the year 1642, by their appointment and direction, Woodward and Safry ran the south bounds of their Colony, and began the line three English miles south of the southermost part of Charles River according to the direction of their Charter, and carryed it on to a certain station on Connecticut River, known by the name of Bissell's House, which for many years they accounted to be the dividing line between the two Governments. No. 12.

N.B.—Although it must be confest that under the colour of this running by Woodward and Safry, the Massachusetts have presumed to grant about one hundred thousand acres of land without their Charter, and within the bounds of Connecticut, yet it may be esteemed an injustice done them to think they ever accounted they had any bounds but those set them in their Charter, or that this running of Woodward and Safry, being solely an act of their own, could alter or establish their bounds, the point is clear, for it is certain they never bounded any of their towns or grants upon it, and it is farther evident that they never understood it for any other than a colour to cover their encroachments upon us, because that all the complaints and motions from Connecticut for the space of fifty years could never prevail with them to run the line till the year 1713. Nor then till our Commissioners were forced to make them the most unreasonable concessions in order to preserve the lives and peace of His Majesty's subjects on the borders, and then (as they express it) they condescended to run the line. No. 5, 12.

No. 6. 1662, King Charles the Second granted the Charter to Connecticut bounded north on the Massachusetts.

No. 7. Connecticut granted to the Town of Windsor, which was about fourteen miles in breadth, that their bounds should extend two miles north from their old bounds, 1671.

No. 8. 1685, Connecticut grants a Patent for confirmation of the title to the Town of Windsor.

No. 9. About the year 1684, the Massachusetts grants to the Town of Suffield and to the Town of Endfield to extend six miles in breadth south from the mouth of Long Meadow Brook, 110, 9.

These towns lap a mile and eight rods upon Windsor, who had a prior grant the whole breadth of the town. No. 9.

Sometimes after this there arose a violent strife between the inhabitants of Windsor and Endfield and Suffield to defend their claims to the land. No. 9, 11, 12.

In the year 1702, Mr. James Taylor, from the Massachusetts, and Commissioners from Connecticut, made a tryal where the line would run, they first set up their quadrant and took their observation at or not far from the distance of three miles south of the southernmost part of Charles River. No. 9, 11.

Again they took their observation at Bissell's House, on Connecticut River, and found that not only the Towns of Windsor and Symsbury, but also the Towns of Endfield and Suffield were south of the line. N. . No. .

N.B.—We have no report of the doings of Mr. James Taylor under his hand, but have often heard that when the Massachusetts saw where the line would fall they suppressed it.

No. 11. The violence of the borderers continuing, Connecticut move again for settling the line according to the Charters, and offer Commissioners on their part with power to settle the property on the borders according to the prior grant No. 9, 11, but this was rejected by the Massachusetts.

N.B.—This was a great concession in Connecticut, for it was found by the tryal made by Mr. Taylor, &c., 1702, that the Massachusetts had granted near 100,000 acres of land in Connecticut, and that Connecticut had not granted one acre north of the line, yet for peace sake they make the offer and are rejected.

No. 12. In May, 1713, the General Assembly of Connecticut being informed that there was a disposition in the Government of the Massachusetts to settle the line by Commissioners, and thereby put an end to the strife, the Assemby impower the Governor and Council to appoint Commissioners on our part to meet and treat with Commissioners from the Province to fix the line and settle the property to the lands adjoyning to it.

N.B.—There is no power given, or pretended to be given, to the Commissioners to alter jurisdiction or settle any other line than that set in the Charters.

No. 13. The Commissioners met at Boston, and on the 13th July, 1713, drew up and signed their agreement No. 13.

N.B.—At first view it appears surprising that any mention should be made in the agreement of the running of Woodward and Safry.

1st. Because it is impossible that that running being the act of but one party should have any force to alter or fix the line set in the Charters.

2ndly. Because the Massachusetts never accounted it to be their line as appears in that they never bounded any of their grants upon it, nor disturbed Windsor in the possession of their lands to the north of it from the year 1636 to this year 1713, which was 77 years.

3rdly. If any monument in this line had now been accounted to have any Government influence in the line to be run, it must be that famous and well-known monument, Bissell's House, that being the only monument mentioned, and by which alone the line of Woodward and Safry could be known.

4thly. There could be no occasion for mentioning Woodward and Safry's Station in this agreement, for if it stood as in the agreement it is declared to do that is three miles south of the southmost part of Charles River according to the Charter: The station and the place set in the Charter is the same, and the place mentioned in the Charter confines the station to it. Why, then, was there any mention made of it? The consequence has proved what the reason was—that is, the Massachusetts had already made the pretention of this line a colour for granting more than 100,000 acres of land in Connecticut, and for their usurping a jurisdiction within our bounds. This was discovered by the tryal made by Mr. Taylor, &c., 1702, but their Commissioners are now contriving under a colour of this station to have the line settled at another place, that is, seven miles and fifty-six rods south of the southermost part of Charles River where they led our Riding Commissioners, and from whence they prevailed with them to run the line and in order to induce them thereto they first declare and describe the station to be three miles south of the southermost part of Charles River, and then agree to run from said station.

But this can be of no service to them, for the place for the beginning the line set in the Charter and described in this agreement being the same, will undoubtedly prevail to be the place whither there can be any station found there or not. Here we may note the large concessions our Commissioners were obliged to in order to keep His Majesty's subjects on the borders from destroying one another as—

1st. To admit a colour that Windsor and Symsbury might fall north of the line, and other grants made by Connecticut, whereas by the tryal made by Mr. Taylor, &c., 1702, the contrary was evident.

2ndly. To admit the colour that Woodstock had been defended by the Massachusetts in the time of war, whereas we cannot understand they ever kept a garison soldier in this town besure it was always far from the frontiers.

3rdly. To allow that all the grants made by the Massachusetts in Connecticut should be settled on the grantees and accept an equivalent far up the country of like quantity where land was of such value that when we had laid out 79,784 acres of it, it was all sold for six hundred and eighty-two pounds New England currency.

4thly. To agree that there should be taken off from Windsor (who had the prior grant from Connecticut) a mile and eight rods, about fourteen miles in length, and confirm it to Suffield and Endfield which were granted by the Massachusetts afterwards.

5thly. Their cedeing the jurisdiction of Woodstock, Endfield, and Suffield to the Massachusetts, if found south of the line.

Thus were they crouded upon and to this they were forced to submit to save the limbs and lives of His Majesty's subjects on the borders.

But here it must be further noted—

1st. The transferring the jurisdiction of the three towns from Connecticut to the Massachusetts was only an act of the Commissioners, for the doing whereof they had no power from their constituents.

2ndly. If the two Governments had never so formally given them this power it had been void for the King is the fountain of authority, and all the jurisdiction these Governments have they have by his Charter, and can have no other, 1713, the Riding Commissioners meet to run the line, and ours are carryed by the Commissioners from the Province to a place south of Whitings Pond on Wrentham Plain at seven miles and fifty-six poles distant south from the southermost part of Charles River, and told that there was Woodward and Safry's Station, and our Commissioners being utter strangers to the place were prevailed upon to run the line from thence without examining the distance from Charles River, and from thence run the line due west to Connecticut River, and found that the Towns of Woodstock, Endfield, and part of Springfield with other grants made by the Massachusetts to the quantity of 79,785 acres in the whole on the east side of Connecticut River were South of the line, for which we have an equivalent acre for acre more than the one-half of which was taken up in the Province of New Hampshire. No. 13.

N.B.—1st. The report of the Riding Commissioners is not to be found, but it appears from No. 21.

2ndly. The place where the Commissioners began this line was not the place set in the Charters, but four miles and fifty-six poles south of it. No. 14.

3rdly. It is not the place agreed to by the Commissioners, July 13th, 1713, where there is only two things given to describe it to as:—1st. That it is three miles south of the southermost part of Charles River, but this place on Wrentham Plain is seven miles and fifty-six poles south of it. 2ndly. That it stands due east from Bissell's House, but this place is more than ten miles to the north of such a line. No. .

The beginning of the line on Wrentham Plain is only the error of the Riding Commissioners done without any order from Connecticut. . . . . Again, if it be of any force it serves to transfer the jurisdiction from Connecticut to the Massachusetts the space of four miles and fifty-six poles for above the length of fifty miles. Therefore void if Connecticut had pretended to give them such a power much more so when it was done only by their own mistake, and it can serve to no other pretence but to put His Majesty's subjects living on those lands from under the protection of the law. For if treason or murther should be committed on those lands, and a Court appointed by the Massachusetts should condemn the offender, the officer putting the judgment in execution would make a legal forfeiture of his life, not being able to plead that the case was within the jurisdiction of the Court that gave judgment, which affords a strong argument to have the line legally settled which they will not comply with.

If it should be objected that the pond north of this place on Wrentham Plain being at the head of Jack's Brook that empties itself into Charles River . . . . is a part of Charles River . . . . We observe—

1st. That the brooks that run into rivers are as really different from the rivers as the drops of rain that fall into those brooks.

2ndly. That this pond and the brook that runs from it into the river have always been called by other names and not part of the river No.

3rdly. The Massachusetts have their north bounds described by 3 miles north of the northernmost part of Merrimack River in the same manner that they have their south bounds described to be 3 miles south of the southernmost part of Charles River, and there they got into the same humour to have their bounds extend to the north of the stream that was not called Merrimack River, but in a suit between them and the Province of New Hampshire they were ruled in it, and confined to the stream called Merrimack River.

No. .

It appears that the Riding Commissioners running the line on the west side of Connecticut River found the Town of Suffield, which is bounded north on Springfield part of the town of Springfield and part of the Town of Westfield, were south of the line, in which were contained 28,008 acres of land granted by the Massachusetts, within the Colony of Connecticut, for which we were ordered a equivalent, but have yet received no part thereof. No. 13. No. .

The Commissioners from Connecticut moved that in making an equivalent for the lands granted by the Massachusetts in the Colony of Connecticut, an allowance should be made in consideration of the great distance that those equivalent lands ly from Connecticut; this motion the Massachusetts Commissioners refer to be considered by their Assembly, but nothing was granted. No. 13.

No. .

The inhabitants of the towns of Woodstock, Suffield, Endfield, and Somers prefer a memorial to the General Assembly of Connecticut in May, 1747, declaring themselves to belong to Connecticut. No. 15.

N.B.—The town of Somers was lately made out of the town of Endfield, on the eastern part of it.

No. .

The Assembly appoint Commissioners to meet and treat with Commissioners from the Province on this affair, and report to the Assembly what shall be offered by the Commissioners from the Province. 16.

No. .

In October, 1747, the inhabitants of the four towns put in another memorial to the Assembly shewing them they had moved to the Assembly of the Province to appoint Commissioners on the affair, but could not be heard. No. 17.

The Assembly again appoint Commissioners to joyn with Commissioners to be appointed by the Province to hear the inhabitants, and report to the two Governments their opinion what is right in the affair, that Justice may be done to His Majesty's subjects. No. 18.

The inhabitants of the four towns again prefer their memorial to the General Assembly of Connecticut in May, 1748, shewing that those towns are within the charter granted to Connecticut, and that they have a right to the privileges granted in the charter to this Government, the agreement of the Commissioners in 1713 notwithstanding, and that the repeated notions of this Colony to the Province to settle this affair upon hearing the said inhabitants had been rejected, and that the Province had now resolved they would not appoint Commissioners for that purpose, and that, as they are within the Colony of Connecticut, and have a right to the privileges and protection of the laws of it, they pray they may be received, acknowledged, and protected as such, this motion was continued to the sessions of the Assembly in May, 1749, waiting to hear something from the Province that might lead to a peaceable settlement. No. 19.

No. .

In May, 1749, the Assembly of this Colony having no encouragement from the Province that they would come into a peaceable settlement, resolve and declare that the inhabitants that are south of the south bounds of the Province set in their charter as far as it joynes on Connecticut are within this Colony, and have a right to the privileges of it, the agreement of the Commissioners, 1713, notwithstanding, and appoint Commissioners to joyn with Commissioners to be appointed by the Province to run the line of division according to the charters, and then both Governments mutually to apply to His Majesty for his royal confirmation of it, and further, if this be not complied with to apply to His Majesty to appoint Commissioners to run and fix the line according to the charters. No. 20.

N.B.—Since this, the inhabitants of the four towns have been peaceably under the Government of Connecticut.

No. .

In 1750, the Assembly make the Province another offer to settle the line by Commissioners, but to no purpose. No. 21.

On this case, we may observe—

That the place for the south bounds of the Massachusetts set in their charter is clear and express.

That the south part of Charles River, 3 English miles, from which the line is to take its rise is so plain and obvious that no disinterested person can raise a dispute about it.

That notwithstanding Connecticut have never asked them for anything but right to be determined by their own charter, yet they have refused and kept us in a quarrel for ninety years, in which time they have granted and settled near one hundred thousand acres of land within the bounds of this Colony.

That notwithstanding our Commissioners in the year 1713 confirmed to their grantees the property of all these lands, yet they refuse to settle the line of jurisdiction with us according to their own charter, and continue to assert their Government over the inhabitants without the bounds of their own charter, and within the bounds of the charter of Connecticut. That from hence it appears they seem determined to extend their Government beyond their charter.

From such incroachments, we have nowhere to apply but to the King for relief, and pray that his subjects may be preserved and protected in those rights and privileges that his Royal ancestors have graciously granted to them, and to this we are much encouraged in that the privileges of his subjects have been dear to His Majesty throughout his reign, and he hath graciously given relief in the case between Massachusetts and the Province of New Hampshire, and the case of the Colony of Rhode Island on the east bounds with the Province of the Massachusetts, which two leases were almost exactly similar with this.

(*Endorsement.*)

STATE OF THE CASE ABOUT YE DIVIDING LINE BETWEEN YE MASSACHUSETTS AND CONNECTICUT.

MASSACHUSETTS AND CONNECTICUT BOUNDARY.

STATEMENT OF THE CASE ON THE CONNECTICUT SIDE.

In British Museum.

I, George Frederick Warren, of the City of London, Notary Public, by Royal authority duly admitted and sworn, do hereby certify that I have carefully collated and examined with the copy recorded in an additional manuscript volume 15487 kept at the British Museum, London, and endorsed "Papers relating to the Boundary Line of Massachusetts and Connecticut 1735–1754" the annexed case, which I certify agrees with such recorded copy in every respect.

Therefore full faith should be given to the said annexed case in Judicature and thereout.

London the eighth day of July, One thousand nine hundred and ten.

G. F. WARREN,
Notary Public.

MASSACHUSETTS AND CONNECTICUT AND OPINION BY ATTORNEY-GENERAL MURRAY.

1754.

CASE RELATING TO THE SOUTHERN BOUNDARY OF THE MASSACHUSETTS BAY, BEING THE DIVIDING LINE BETWEEN THAT COLONY AND CONNECTICUT.

And Opinion of W. Murray, Dated 5th November, 1754.

CASE RELATING TO THE SOUTHERN BOUNDARY OF THE MASSACHUSETTS BAY, BEING THE DIVIDING LINE BETWEEN THAT COLONY AND CONNECTICUT.

4 Charles 1st 1628. Mar. 4. Old Charter to the Colony of the Massachusetts Bay.

King Charles the 1st by Letters Patent under the Great Seal Reciting Letters Patent of King James 1st, dated 3rd November, 18th year of his reign, whereby had been granted to the Council of Plymouth for planting of New England all that part of America lying in breadth from 40 degrees of northerly latitude from the equinoctial line to the 48 degree of northerly latitude inclusive and in length within all the breadth aforesaid throughout all the main land from sea to sea. To hold to them and their successors for ever and reciting and indre which had been made by the said Council of Plymouth dated 19th March, 3rd Charles 1st, whereby they had granted unto Sir Henry Roswell and five others and their heirs.

All that part of New England which lies and extends between a great river there called Merrimack River, and a certain other river there called Charles River, being in the bottom of a certain bay there commonly called Massachusetts Bay; and also all and singular those lands and hereditaments whatsoever lying within the space of 3 English miles on the south part of the said river called Charles River or of any or every part thereof; and also all lands, lying within the space of 3 miles to the southward of the said Massachusetts Bay; and also all lands within the space of 3 miles to the northward of the said Merrimack River or to the northward of any and every part thereof; and all lands whatsoever lying within the limits aforesaid north and south in latitude and breadth and in length and longitude of and within all the breadth aforesaid throughout the main lands there from the Atlantick or Western Sea and Ocean on the east part to the south sea on the west part.

His said late Majesty King Charles the 1st did grant and confirm unto the said Sr. Henry Roswell, and others, their heirs and assigns, all the said part of New England lying and extending between the bounds and limits in the said indre expressed, and which those letters patent contain a grant of by the very same descriptions and boundaries as are expressed in the said recited indre. And King Charles also created the said grantees, and such others as should be made free of the said company, a body politick and corporate, by the name of the Governor and Company of the Massachusetts Bay.

Settlements by other English Planters in Connecticut. 1636 to 1640.

Divers other English planters made settlements to ye South and adjoining to ye said tract of land that had been so granted to ye Massachusetts Bay, and upon or near to a certain river there called Connecticut River in New England, and formed themselves into a government and settled several. Towns, and particularly three called by ye names of Hartford, Windsor and Weathersfield, and fixed the north bound of ye said Town of Windsor at Kettlebrook, one place near to ye said south boundary of ye said Massachusetts grant. And the said planters raised horses and conquered the Pequotts, which were the most powerful nation of Indians in New England. And a few years afterwards they purchased the territory of the Mohegan Indians from Uncass, their Sachem.

1642. A pretended false Line run by the Massachusetts Bay alone without ye intervention of any other parties as their Southern Boundary.

The Massachusetts colony pretend that they, in this year, caused two persons by their own appointment and direction, that is to say, Woodward and Safry, to run the said south boundary line of their colony, and that they began as they further pretend the said line 3 English miles south of the southernmost part of ye said Charles River, according to the direction of their charter, and carryed it on to a certain station on Connecticut River, known by the name of Bissell's House, and which line so run they for many years were pleased to account to be the south boundary line of their government.

But note, this pretended line, instead of being really begun as alleged only 3 miles south of the most southernmost part of Charles River, as the charter directed, was begun 7 miles and 56 poles south of the most southerly part of the said Charles River, as afterwards will appear, and therefore if such line was in fact run, it was invalid, being erroneous as aforesaid, and further as made without any proper authority from the Crown, and by the Massachusetts agents only *ex parte*.

23rd April, 1662 14 Cha. 2 Connecticut Charter.

King Charles the 2nd by letters patent, under the great seal reciting that several lands had been obtained and settled by His Majesty's subjects in America, and that it had been represented by the petition of John Winthrop and others, persons principally interested in the Colony of Connecticut, that great part thereof was purchased and other part obtained by conquest at their only expense. His Majesty creates

and makes them a body corporate, by the name of the Governor and Company of the English Colony of Connecticut in New England in America, and grants unto them, the said Governor and Company and their successors—

All that part of His Majesty's dominions in New England in America bounden on the east by Narraganset River, commonly called Narraganset Bay, where the said river falleth into the sea, and on the north by the line of the Massachusetts' plantation, and on the south by the sea, and in longitude as the line of the Massachusetts' Colony, running from east to west, that is to say, from the said Narraganset Bay on the east to the South Sea on the west part; so that ye south boundary line of ye said grant to Massachusetts Bay is ye north boundary of Connecticut and ye dividing line between those two colonys.

1671 and 1685. Grant by Connecticut of Townships near their North bounds.

The said colony of Connecticut in 1671, by a grant or order of a general court, extended the bounds of their said Town of Windsor (which was near their said north boundary) 2 miles north of its former bounds, and in 1685 granted a patent to the then proprietors of the said Town of Windsor for the confirmation to them of the said lands within their said township, and describing the same particularly by meets and bounds.

1681. Grant of Township by the Massachusetts near their South bounds.

The Massachusetts grant to the Town of Suffield and to the Town of Endfield which were also near ye boundary line between ye said two Provinces that they should extend 6 miles in breadth south of the mouth of Long Meadows Brook,

Which towns of Suffield and Endfield by this grant of the Massachusetts were made to lap a mile and 8 roods upon ye said Town of Windsor, that had a prior grant from Connecticut as before mentioned.

The Grants interfering with each other.

Differences soon after arose and a violent strife between the inhabitants of the said Town of Windsor and Endfield and Suffield to defend their claims to the lands that had been severally granted to them as aforesaid.

Differences arose between the Inhabitants in the said Townships.

1702. Observations taken by Taylor and others commissioned by both Colonies of the Massachusetts said pretended Boundary Line when the falsity of it was most conspicuous.

Upon occasion of those differences, James Taylor, from the Massachusetts and Commissioners from Connecticut made a tryal where the true boundary line between the two Provinces would run, and to that end they first set up their quadrant and took their observation at ye true point; they ought, vizt., at or not far from the distance of 3 miles south of the southermost part of Charles River, after which they took a second observation at Bissell's House, mentioned as aforesaid, to be situate on the said pretended boundary line said to have been run by Woodword and Safry in 1642, as aforesaid, and they then found that not only the towns of Windsor and another town established by Connecticut, called Symsbury, but even the said towns of Endfield and Suffield established by ye Massachusetts were south, and on the Connecticut side of the true boundary line between the two colonys; but we have not Taylor's report under his hand of these his proceedings; they are however taken notice of in some subsequent Acts, and it is say'd that when the Massachusetts saw where the true line would fall as made by these observations of Taylor they suppressed his report, for under colour of the said line, said to have been run by Woodward and Safry The Massachusetts had presumed to grant great quantitys of land without the limits of their charter, and within the bounds of Connecticut.

1708. Act of Assembly of Connecticut, appointing Commissioners to settle the Boundary Line with Commissioners to be appointed by ye Massachusetts.

The violence of the borderers on ye said boundary line between ye two colonies continuing, an Act of Assembly was passed by the colony of Connecticut reciting divers outrages committed by the inhabitants of the said towns of Endfield and Suffield on the other said towns, and that Connecticut being desirous to prevent the same by a fair settling the boundary line between the two provinces after their many theretofore fruitless endeavours for the like purpose, enact that there should be Commissioners appointed by the Governor and Council of Connecticut for running the said boundary line to act with such Commissioners as should be appointed by the said Massachusetts.

N.B.—As ye Massachusetts were sensible, they could have no just or true bounds but those set them in their charter; and that the said pretended line run by Woodward and Safry was false, but had served them as a colour to cover their incroachments. Connecticut, notwithstanding several complaints made by them, had not been able nor could now prevail with the Massachusetts to run the line in conjunction with them, and when at last the Massachusetts did consent thereto the Connecticut Commissioners were forced to make them the most unreasonable concessions in order to preserve the lives and peace of His Majesty's subjects on the borders, and then (as they express it) they condescended to run the line as hereinafter mentioned.

1713, May 14th. Appointment of Commissioners by both Colonys to settle the Boundary Line.

At the General Assembly of Connecticut, an Agreement being laid before them of the Governor and Council of the Massachusetts and of Connecticut, for appointing Commissioners of both Governments to survey the land lying near the line of division and draw a map thereof, to be laid before both Assemblys in order to their coming into some method for fixing the said line, and that such Commissioners had prepared two maps accordingly, and then lying before the said Assemblys respectively. The Assembly of Connecticut impower the Governor and Council to appoint Commissioners on their part to meet and treat with Commissioners to be appointed by the Massachusetts to fix the said line of division, and establish the property of the lands adjoining thereto, according to instructions to be given the said Commissioners, and what agreement they should come to should be held good.

N.B.—No power was, or is pretended, or could be given to the Commissioners to alter jurisdiction or settle any other line than that in the charters.

13th July, 1713. The return or Agreement of the said Commissioners for settling the said Line.

The Commissioners met at Boston and drew up, signed and sealed, a return, or agreement in form of a deed, reciting that the south line of the Massachusetts in 1642, by the appointment of their Governor and Council, was surveyed by the aforesaid Woodward and Safry, commencing the same three English miles on the south of Charles River, and of every part thereof, agreeable to their Charter and carryed on to a station on Connecticut River, called Bissell's House, which for many years was accounted the dividing line between the said Governments, supposing that line to be right, but that the Colony of Connecticut, having obtained a charter and grant from the Crown of land bounded, as aforesaid, on the north with the south line of the Massachusetts, had some years after their said charter drawn the said line into question, by reason whereof the grants of lands bordering thereon made by the respective Governments were controverted, and suits had arisen about the same. For a friendly determining whereof, two Commissioners, appointed on the part of the Massachusetts, and two on the part of Connecticut, upon full discussing and consideration of the claims on both sides. And the proposals and concessions theretofore made, by virtue of the powers to them delegated by the respective Assemblys of the said Provinces, did mutually condescend, conclude, and fully agree as follows:— 1st. That the dividing line should take its commencement from the ancient station of Woodward and Safry, and that a west line should be run from hence, according to the direction in the Massachusetts Charter, which line, as far as there are any settlements, should be run and determined by suitable persons appointed by each Government within twelve months, and afterwards be further continued to the full extent as the Government should direct. 2dly. That the town of Woodstock, granted in 1683, and planted and defended by the Massachusetts at great expense in a time of war, and the Town of Symsbury, granted in 1670, and established by Connecticut, do remain entire to the respective Governments by which they were granted—both as to property and jurisdiction—notwithstanding any intersection by a new running of the line. 3dly. That a west-northerly line be drawn from a large white oak standing on the west side of the bank of Connecticut River, &c., as therein further described, and that the Town of Suffield should continue in the jurisdiction of the Massachusetts and the Town of Windsor to continue in the jurisdiction of Connecticut. 4thly. The like agreement with respect to several townships, and that several tracts of land lying near the line granted to several particular persons, therein named, should remain to the grantees, though upon running the new line it should appear any of the said lands did not lie within the Government that had granted the same, and the claims of other particular persons remaining unsettled were reserved for further consideration, as therein mentioned; and where any town or particular persons, by reason of any concessions therein made, or new fixing, the line should be cut short in quantity of their grants, or any township thereby consented to continue under the Government they were established by should appear to be on the side of the other Government, an equivalent should be made them of the like quantity of land.

The Plan of ye Line.

There is a plan also of the line as run by these Commissioners, which begins at Woodward and Safry's said station on the east and runs from thence in a straight line due west and falls considerably above, or to the north, of the said Bissell's house, a noted land-mark situated on ye said former line, and which so far differed from and falsfyed ye said former running of Woodward *v.* Safry; and upon this plan is a memorandum dated December, 1713, certifying it to be the plan of the line between the said two provinces, as agreed, allowed, ratifyed, and confirmed by the undersigned Governors and Commissioners for both Governments, and that the towns and lands through which the line passed, and were adjacent thereto, were confirmed to the several persons concerned to hold to them and their heirs and the equivalent accordingly, pursuant to the aforesaid Articles of 13th July, 1713.

28th and 29th Decr., 1713. Minutes of Proceedings at a Meeting of the Govrs. and Commissrs. of both Provinces in consequence of the aforesd. Agreement.

At a meeting at Boston of the Governors of the Massachusetts and Connecticut with the Commissioners appointed by their General Assemblys to settle the partition line between the said two Governments, is laid before them and entered a list or account entituled grants made by the Massachusetts for which equivalents were to be granted, being so much as falls to the southward of the colony line lately run, consisting of fourteen articles of land belonging to the towns and persons therein set down, and amounting to 79,785 acres, and is followed by an entry that the Colony of Connecticut must have an equivalent granted for the same agreeable to the aforesaid return of the Commissioners of the 13th July, 1713, reported and accepted in the General Assembly of both provinces, and the said 79,785 acres to be allowed to Connecticut for the equivalent are to be taken up in the waste of Massachusetts Province, which is the equivalent on the east side of Connecticut River. What is found on the west side of that River in the Massachusetts possession is to be allowed for in the next session of the Commissioners after the further running of the line; and reciting that by the late running of the line it appeared to intersect and take off part of the Townships of Springfield and Westfield, both which to the southward of the line, it is entered as mutually consented and agreed that the said land should remain to those townships within the Government of the Massachusetts, the intersection of the line notwithstanding. It is further entered that the Governor and Commissioners of Connecticut had offered to take the said equivalent of 79,785 acres, partly upon Connecticut River at or towards the coast clear of any grant, vizt., 40,000 in one place and 30,000 in another, and 9,785 in other parts of the province, which, being debated and considered, is allowed by the Governor and Commissioners of the Massachusetts, and accordingly declared so to be agreed.

Moved by the Governor and Commissioners for Connecticut that in stating the said equivalent to be allowed Connecticut, consideration should be had of the great distance those equivalents would be at from the colony, and therefore that they should be increased in quantity. In answer to which it was proposed that consideration should be had with regard to the distance or nearness of the sea and to the goodness and value of the lands, as well as the number of acres. And it was agreed to recommend it to the meetings of the General Assemblys of the provinces to approve the proposals accordingly. 8th July, 1714.

Reciting that a tract of land, originally belonging to Thos. Clark by grant of the Massachusetts, mentioned in the said return, and for which an equivalent was to be made to Connecticut, the said tract falling south of the line. It is agreed an equivalent should be allowed to Connecticut, and that land remain to Clarke. And that it appearing by the report of the riding commissioners apon their continuing the line on the west side of Connecticut River, that there was 28,008 acres of land further to be allowed as an equivalent to Connecticut, to be allotted out of the waste lands of the Massachusetts. The said quantity is accordingly granted and allowed. 12th July.

N.B.—Connecticut had never any equivalent in respect of those two last Articles.

Note also. There is wrote upon the aforesaid plan a memorandum, dated said 12th July, 1714, as follows:—The continuation of the line between the said two Governments, as underneath delineated and run by the Riding Commissioners on the part of both provinces. Is hereby ratified and confirmed, signed, and sealed by the Governor and Commissioners of both provinces.

Observations on the said Settlement of ye Line made by ye Agreement of ye two Colonys.

At first view it appears surprising that they should by previous agreement stipulate that ye line of division to be run should commence from the antient station of Woodward and Safry, or indeed that any mention should be made of that line, said to have been run by Woodward and Safry—1st. Because that running being the act of only one party interested, and without the authority or participation of the Crown, could not have any force to alter or fix the line directed by the Charters. 2ndly. The Massachusetts themselves never so far relyed on that line of Woodward and Safry to be their boundary line as to boundary of their grants upon it, nor did they disturb ye inhabitants of ye said Town of Windsor in the possession of their lands to the north of that line from the year 1636 to the time of this accord, which was a space of seventy-seven years. 3rdly. There could have been no good and just reason for mentioning Woodward and Safrys station in the said agreement, because if it had really stood as is declared in ye said agreement three miles south of the southern most part of Charles River, according to the Charter, it was unnecessary. 4thly. It was falsely represented to be only three miles south of the Charles River, when it was, in fact, about seven mile south of ye most southermost of ye river; but the Massachusetts having before made the pretension of that line a colour for granting more than 100,000 acres of land in Connecticut, and also for their usurping a jurisdiction within the Connecticut bounds, as before mentioned, which have been discovered by the tryal made by Taylor in 1702; the Massachusetts Commissioners, under colour of that station, now contrived to have the line on this running settled at seven miles and fifty-six rods south of the southermost part of Charles River, the said Woodward and Safrys said station, where they led the Connecticut riding Commissioners to begin ye line, being so far to ye south of ye southermost part of that river, and from whence they prevailed with them to run the line in a straight direction due west, and in order to induce them thereto, first declaring and describing the station they began from (though untruly) to be three miles south of the southermost part of Charles River; but which can never avail them, for the place for the beginning the line must be really and truly only three miles south of Charles River, as set in the Charter, and, indeed, as is acknowledged by that very agreement. 5thly. That station of Woodward and Safry, falsely set down as only three miles south, when it was above seven, ought not to be regarded no more than the said other famous and well-known monument, Bissell's House, on the same line of Woodward and Safrys, and which on this running was first to be given up being found to be still so much farther to the south as not even to be supported by this false commencement of ye line.

Here we may note also the large concessions the Connecticut Commissioners were obliged to make in order to keep his Majesty's subjects on the borders from destroying one another. And, 1st, that ye said line should begin at a fixed station, instead of three miles south generally of ye river, and that a station on a line that had been run by ye said Massachusetts Colony *ex parte*. 2ndly. For Connecticut to cede the jurisdiction of Woodstock, Endfield, and Suffield, &c., to the Massachusetts if found south of the line, shows how they were overborn upon. 3rdly. To allow that the grants made by the Massachusetts in Connecticut should be settled on the grantees, and accept an equivalent far up the country of the like quantity of land, where it was of small value, that even when Connecticut had laid out 79,785 acres in pursuance of the said agreement, it was all sold for £682 New England currency, and half of it was taken up within the limits of another colony, viz., New Hampshire, was it afterwards turned out on the settlement of the boundary between that colony and the Massachusetts. Lastly, the line as run is four miles and fifty-six poles south of the place set in the Charters, and therefore if it was to be allowed to be of any force would be transferring the jurisdiction from Connecticut to the Massachusetts over a tract of land of the breadth of four miles and 56 poles for above the length of 50 miles together. But can such transferring the jurisdiction of our towns and lands

from one Government to another by those Commissioners be of any avail? And for the doing whereof they had no power from their constituents, or even if the two Governments had never so formally given them that power, would it not have been void for want of the Kings authority? The jurisdiction these Governments have is restricted by their Charter to the lands contained within their respective limits, and cannot by them be extended farther, nor transferred over from one to the other, but must remain as the Crown was pleased to fix them by their Charters, until altered by the authority of that power under which they hold their Charters; that is, ye Crown, the fountain of all power, and this is so strong and irrefragable, we submit, as not to admit of an answer.

Agreement of the Massachusetts in support of the Line.

But still it is probable the Massachusetts may insist if the said line was not run under a proper authority so as to be conclusive, yet that it is rightly and truly run, and will be so decided when run under a proper authority, for that a pond situate on Wrentham Plain, 3 miles north of ye said station, from whence the said Commissioners began the said line, being at the head of Jack's Brook, that emptyes itself into Charles River, is a part of Charles River.

Q. A Plan of the whole of Charles River with the Line that has been run will be very necessary to be made and included in one Draft upon a small scale of one Sheet of paper.

To which Connecticut answers, brooks that run into rivers are as really different from the rivers as the drops of rain that fall into those brooks; and that this pond and the brook that runs from it into Charles River have always been called by other names, and that pond or Jack's Brook that runs from it is most clear not part of Charles River as may be seen by the plan thereof, and instead of running east or west runs directly north.

Answer thereto.

Further the Massachusets have their north bounds described by 3 miles north of the northermost part of Merrimack River in the same manner that they have their south bounds described to be 3 miles south of the southermost part of Charles River, and there they got into the same humour and practices to extend their north bounds and made great incroachments on that side the Province of Newhampshire. But on the petition of the House of Representatives of Newhampshire to His Majesty in Council, a Commission was issued under the Great Seal for settling the boundaries between those two Provinces and the line run under such Commission at their joint expense, and the Massachusetts in the end were overruled in their incroachments, and that north boundary set right according to their Charter. And note ye line in that case was determined to be a similar curved line pursuing ye course of Merrimack River at 3 miles distance till that river took a different direction, when it was to be a northern boundary, and then to be carryed on by a straight line.

A like pretence of the Massachusetts with the present in regard to another Boundary on Newhampshire settled under his Majesty's Commission.

1747, May 20th. Memorial of the Inhabitants of Woodstock, &c., to the Connecticut Assembly claiming their right to be Members of that Colony.

The inhabitants of the towns of Woodstock, Suffield, Endfield and Somers preferred a memorial to the General Assembly of Connecticut, setting forth that those towns were originally within the bounds of Connecticut as circumscribed in their said Charter, and taking notice of the aforesaid disputes and proceedings of the two Colonys of the Massachusetts and Connecticut in respect of the said bounds, and that by a compromise and articles in 1713 between the 2 Governments the Massachusetts had been allowed to have the right of jurisdiction over those towns. And then setting forth that the memorialists were greatly agrieved hereby for that they conceived Connecticut could not transfer or alter the jurisdiction of the lands granted by the Royal Charter, and the doing thereof was an infringement on the rights of the subject. That the memorialists were no ways consenting thereto, and they claimed the rights and privileges of members of Connecticut and beg the protection of their Assembly. For that the Massachusetts under the colour aforesaid compell them to send representatives to their General Assembly, and to do other duties under pain of pecuniary fines, and therefore pray the Assembly to appoint a Committee to consider and report their opinion on the aforesaid grievance or to treat with the Massachusetts or to concert other proper measures for their relief.

The Assembly of Connecticut appoint Commissioners.

The Assembly of Connecticut take the said memorial into consideration and thereupon appoint Commissioners to meet and confer with such as may be appointed by the Province of the Massachusetts, to hear consider and report to the Assembly their opinion on what shall be offered by Commissioners of the Massachusetts and the inhabitants of the said towns.

Octr. 1747. 2nd Memorial of the said Towns.

The said four towns preferr another memorial of the Assembly of Connecticut taking notice of their said former memorial and the resolve of the Assembly thereon. And further setting forth that the memorialists had by another memorial in August then last represented the matter to the Assembly of the Massachusetts praying them also to appoint Commissioners on the affair or grant other relief; but could not be heard thereon. Wherefore they pray the Connecticut Assembly to take the case into their further consideration, adding that they cannot apprehend themselves to be disfranchised of the privileges of the Colony without the Royal Confirmation, pray the Assembly to declare in favour of their rights and receive them under their protection and incorporate them into towns. And offer if need be that the said towns should be at the expense of disputing the matter with the Massachusetts.

The Assembly's further resolve.

The Assembly of Connecticut take the said petition into consideration, and being desirous to prevent all controversies between the provinces respecting the said towns, and that right may be done the inhabitants again appoint Commissioners to join with Commissioners to be appointed by the Massachusetts to have ye inhabitants and report to the 2 Governments their opinion what is right in the affair. And the Governor is desired to transmitt to the Governor of the Massachusetts a copy of this resolve requesting him to lay it before their Assembly.

O

The said 4 towns preferr a 3rd memorial to the Assembly of Connecticut setting forth their said former memorials and resolves of the Connecticut Assembly. And further that the Governor of the Massachusetts had laid before the Assembly of that Province a copy of the last resolve of the Connecticut Assembly, when the Massachusetts Assembly in November then last resolved that they would not appoint Commissioners to join with the Commissioners of Connecticut to hear the inhabitants of the said towns on the matters of their complaint, and therefore praying further relief in the premises. 12th May, 1748. 3rd Memorial of said Towns.

N.B.—The consideration of this last memorial was continued to the next sessions of the Assembly, waiting in hopes to hear something from the Massachusetts that might lead to a peaceable settlement.

The Assembly of Connecticut having no encouragement from the Massachusetts that they would come into any peaceable settlement take the said petitions of the 4 towns into consideration, and taking notice that the petitioners' agents further urged in support of the petitions that the said agreement in 1713 was made through mistake and that Connecticut received no equivalent for the jurisdiction over those towns, and as it was partly executory it was never fully compleated nor ever established by Royal Confirmation. And therefore though it was approved by the Assemblys of both Governments, yet as to jurisdiction particularly it must be looked on as null and void. The Assembly of Connecticut therefore are of opinion as it does not appear that ever the said agreement hath so it never ought to receive the Royal Confirmation. And that as the Governments could not give up exchange or alter their jurisdiction so the said agreement as far as it respected jurisdiction is void. And declare that all the inhabitants that are south of the line fixed by the Massachusetts' Charter are within and have a right to the priviledges of Connecticut the said agreement of 1713. Notwithstanding and for as much as there may be some uncertainty with respect to the beginning and running of the said line it is necessary that measures be taken to ascertain the same according to the Charter, therefore the Assembly of Connecticut appoint Commissioners to join with Commissioners to be appointed by the Massachusetts to ascertain and fix the said line according to the charters, and the same being approved by both Governments, that joint application be made for the Royal confirmation of it, and the Governor is desired to acquaint the Government of the Massachusetts herewith and request their joining therein. And farther resolve if the Massachusetts refuse to join as aforesaid or the Commissioners do not agree in the matter aforesaid to prepare and state the case and send it to the agent for Connecticut in Great Britain and direct him to petition His Majesty to appoint Commissioners to run and ascertain the division line between the said Colonys according to the charters. May, 1759. Resolve of the Assembly of Connecticut.

N.B.—Since this the inhabitants of the 4 towns have been suffered by the Massachusetts to be peaceably under the Government of Connecticut.

The Assembly of Connecticut taking notice of their last resolve, and being desirous that all suitable measures may be taken for accommodating the matters in difference between the 2 Governments respecting the division line, they make the Massachusetts another offer to settle the line by Commissioners, but to no purpose. Octr. 1750. Assembly of Connecticut again after Commissrs. to settle the Line.

His Majesty in 2 other similar cases between the Massachusetts and the Province of Newhampshire and the Colony of Rhode Island having given relief and settled the boundary between those two Provinces:

It is therefore proposed that a petition should be presented by the House of Representatives of Connecticut to His Majesty in Council, praying a Commission to be issued under the Great Seal to certain Commissioners therein to be named for settling the boundaries between the Massachusetts and that Colony.

Whether in this case and on consideration of the various circumstances attending it, Is there sufficient ground to expect that on a petition of the Assembly of Connecticut a Commission will be granted by ye Crown appointing Commissioners out of the neighbouring Governments to run the dividing line between Connecticut and the Massachusetts and determine that boundary, Or will the concessions injudiciously made by the aforesaid agreements between the said 2 Colonys in 1713 without any confirmation from the Crown be a bar to the issuing such Commission at this time; And in case a Commission should be granted, how ought the said line to be run with respect to the said Charles River, whether at 3 miles' distance from the most southerly point thereof by a straight line due east and west, or in a similar curved line pursuing the course of that river as far as the same continues in an east and west direction, and, from thence to be continued by a straight line due east and west? And what is your opinion with respect to ye pretence set up by ye Massachusetts of ye said pond at ye head of Jack's Brook which emptys itself into Charles River being part of Charles River? Q

See the Attorney-General's opinion on the back of ffo. 8.

OPINION.

I am of opinion that in settling the above mentioned boundary the Crown will not disturb the settlement by the two Provinces so long ago as 1713, and Commissioners appointed in 1708. I apprehend His Majesty will confirm their agreement, which of itself is not binding upon the Crown, but neither Province should be suffered

to litigate such an amicable compromise of doubtful boundarys. If the matter was open the same construction already made in the case of Merrimack River must be put upon the same words in the same charter applied to Charles River. As to Jack's Brook, it is impossible to say whether it is part of Charles River without a view, at least without an exact plan, and knowing how it has been reputed. But any such distinction, I apprehend, would have great weight in support of a solemn agreement so long acquiesced under. If the matter was gone into at large, in my apprehension the question should not now be suffered to be agitated between the Provinces. The agreement ought to stand unless there are objections to it on the part of the Crown in respect of the inhabitants, or the King's sovereignity, or upon any account whatsoever. But if the King approves the agreement I think it is now too late for the partys to dispute it.

W. MURRAY.

5 Novr., 1754.

[*Endorsement.*]

(gh.) Drat. Case.

By the Colony of Connecticut respecting the boundary line between that Province and The Massachusetts Bay, with Copy Attorney-General's opinion, for your persusal.

24th Octr., 1754.

Fair copy fo. 8.—Sent to Mr. Partridge to send to the Colony.

Another copy made at the same time and laid before the Attorney-General.

8th Novr., 1754.

The original with ye Attorney-General's opinion sent to Mr. Partridge.

5 gs.

JOSA. SHARPE.

MASSACHUSETTS AND CONNECTICUT BOUNDARY.

Case relating to the southern boundary of the Massachusetts Bay, being the dividing line between that Colony and Connecticut, and opinion of W. Murray, dated 5th November, 1754.

(In British Museum.)

FRESHFIELDS.

EXTRACTS FROM COUNCIL REGISTER No. 15. GEORGE 2ND.

AT THE COURT AT ST. JAMES'S.

Council Register. No. 15. Geo. 2nd. Jan. 1st 1754 to Dec. 31st 1755.

THE 12TH DAY OF NOVEMBER, 1754.

Page 257 (104).

Present:

The King's Most Excellent Majesty.

Arch Bishop of Canterbury,	Earl of Holderness,
Lord Chamberlain,	Sir Thomas Robinson,
Duke of Newcastle,	Lord Anson.

Massachusetts Bay.

Petition of the agent relating to the Boundarys. Refd. to a Committee.

Upon reading this day at the Board, the humble petition of William Bellon, Esqr., agent for His Majesty's province of the Massachusetts Bay in America, humbly praying that His Majesty will be most graciously pleased to inhibit and enjoin the Colony of Connecticut, from breaking in upon, or disputing the settlement of the boundary or divisional line solemnly made so long since as the year 1713, both with regard to the right of property and jurisdiction between the two governments, and that His Majesty will be graciously pleased to give the said settlement in 1713, the additional sanction of His Royal approbation and confirmation, and thereby quiet the present intestine disputes between the said two governments, and restore and settle perpetual peace and amity between them and the several townships situate on the borders of each Province; or that His Majesty will be pleased to make such further and other order in the premises, as the nature and circumstances of the case shall require, and as to His Majesty, in his most consummate wisdom, shall see proper. It is ordered by His Majesty in Council, that the said petition (a copy whereof is hereunto annexed) be, and it is hereby referred to the Right Honorable the Lords of the Committee of Council for Plantation Affairs, to consider the same, and report their opinion thereupon to His Majesty at this Board.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 15. Geo. 2nd. Jan. 1st 1754 to Dec. 31st 1755.

THE 17TH DAY OF DECEMBER, 1754.

Page 275 (104)

By the Right Honorable the Lords of the Committee of Council for hearing Appeals from the Plantations, &c.

Present:

Lord President,	Lord Sandys,
Earl of Halifax,	Lord Chief Justice Willes,
Lord Berkeley of Stratton,	G. Dodington, Esq.

Massachusetts Bay.

His Majesty having been pleased by his Order in Council of the 12th of last month, to refer unto this Committee, the humble petition of William Bolland, Esq., agent for His Majesty's province of the Massachusetts Bay in America, that His Majesty will be most graciously pleased to inhibit and injoin the Colony of Connecticut from breaking in upon, or disputing the settlement of the boundary or divisional line solemnly made, so long since as the year 1713, both with regard to the right of property and jurisdiction between the two governments; and that His Majesty will be graciously pleased to give the said settlement in 1713, the additional sanction of His Royal approbation and confirmation, and thereby quiet the intestine disputes between the said two governments, and restore and settle perpetual peace and amity between them and the several townships situate on the borders of each government; or, that His Majesty will be pleased to make such other and further order in the premises, as the nature and the circumstances of the case shall require, and as to His Majesty in his most consummate wisdom shall see proper. The Lords of the Committee this day took the said petition into their consideration and are hereby pleased to order that a copy thereof (which is hereunto annexed), be transmitted to the Governor and Company of the Colony of Connecticut, who are hereby required forthwith to return their answer thereunto in writing to this Committee; and that this order, together with the copy of the said petition annexed, be delivered into the hands of the agent of the said colony, who is hereby required to transmit the same accordingly.

MASSACHUSETTS AND CONNECTICUT BOUNDARY.

EXTRACT FROM COUNCIL CHAMBER No. 15. GEORGE II.

FRESHFIELDS.

Privy Council Office,
Downing Street, London, S.W.

I hereby certify that the document (pages 1 to 3) annexed hereto contains true extracts from Council Register, No. 3, George III.

REGISTRAR OF THE PRIVY COUNCIL.

22nd July, 1910.

NEW HAMPSHIRE AND NEW YORK.

1764.

AT THE COURT AT ST. JAMES'S.

Council Register. No. 3. Geo. III. May 1763 to Oct. 1764. Page 502.

THE 11TH DAY OF JULY, 1764.

Present:

The King's Most Excellent Majesty.

Arch Bishop of Canterbury,	Earl of Litchfield,
Lord Chancellor,	Earl of Halifax,
Duke of Ancaster,	Earl of Hillsborough,
Marquess of Granby,	Bishop of London,
Lord Steward,	James Oswald, Esqr.
Earl of Sandwich,	

New Hants and New York.

Order referring to a Committee a Representation of the Bd. of Trade upon the disputes between these Provinces concerning the Boundary, and upon the Govr. of New Hants Conduct in respect to Grants of Lands.

Upon reading this day at the Board a representation from the Lords Commissioners for Trade and Plantations dated the 10th of this instant upon the disputes between the Provinces of New Hampshire and New York, concerning the boundary, and also upon the Governor of New Hampshire's conduct in respect to granting lands, it is ordered by His Majesty in Council that the said representation and papers thereto annexed, be and they are hereby referred to, the Right Honourable the Lords of the Committee of Council for Plantation Affairs, to consider the same, and report their opinion thereupon to His Majesty at this Board.

AT THE COUNCIL CHAMBER, WHITEHALL.

THE 17TH DAY OF JULY, 1764.

By the Right Honorable the Lords of the Committee of Council for Plantation Affairs.

Council Register. No. 3. Geo. III. May 1763 to Oct. 1764. Page 525.

Present:

Archbishop of Canterbury,	Earl of Hillsborough,
Lord Steward,	Chancellor of the Exchequer,
Earl of Sandwich,	Robert Nugent, Esqr.,
Earl of Cholmondeley,	James Oswald, Esqr,,
Earl of Halifax,	

New Hants and New York.

Committee Report for declaring the Boundary Line between these Provinces.

Your Majesty having been pleased by your Order in Council of the 11th of this instant to refer unto this Committee a representation from the Lords Commissioners for Trade and Plantations relative to the disputes that have some years subsisted between the provinces of New Hampshire and New York concerning the boundary line between those provinces, and the extent of their respective Jurisdiction, and proposing that the western banks of the river Connecticut from where it enters the province of the Massachusetts Bay as far north as the 45th deg. of northern latitude should be declared to be the boundary line between the said two provinces. The Lords of the Committee in obedience to Your Majesty's said order of reference this day took the said representation into their consideration, and agreeing in opinion with what is proposed by the said Lords Commissioners, do humbly report to Your Majesty that it may be advisable, in order to put an end to the disputes which have so long disturbed the peace of Your Majesty's subjects, for Your Majesty to declare and order the Western banks of the river Connecticut from where it enters the province of the Massachusetts Bay as far north as the 45th deg. of northern latitude to be the boundary line between the said two provinces of New Hampshire and New York.

AT THE COURT AT ST. JAMES'S.

Council Register. No. 3. Geo. III. May 1763 to Oct. 1764. Pages 540–1.

THE 20TH DAY OF JULY, 1764.

Present:

The King's Most Excellent Majesty.

Lord Steward,	Earl of Hillsborough,
Earl of Sandwich,	Mr. Vice-Chamberlain,
Earl of Halifax,	Gilbert Elliott, Esqr.,
Earl of Powis,	James Oswald, Esqr.
Earl of Harcourt,	

New Hants and New York.

Boundary Line Declared.

Whereas there was this day read at the Board a report made by the Right Honourable the Lords of the Committee of Council for Plantation Affairs dated the 17th of this instant upon considering a representation from the Lords Commissioners for Trade and Plantations relative to the disputes that have some years subsisted between the provinces of New Hampshire and New York concerning the boundary line between those provinces. His Majesty, taking the same into consideration, was pleased with the advice of his Privy Council to approve of what is therein proposed, and doth accordingly hereby order and declare the western banks of the river Connecticut from where it enters the province of the Massachusetts Bay as far north as the 45th deg. of northern latitude to be the boundary line between the said two provinces of New Hampshire and New York. Whereof the respective Governors and Commanders-in-Chief of His Majesty's said provinces of New Hampshire and New York for the time being, and all others whom it may concern, are to take notice of His Majesty's pleasure hereby signified, and govern themselves accordingly.

NEW YORK AND QUEBEC.

1768.

NEW YORK AND QUEBEC.

EXTRACTS FROM COUNCIL REGISTER No. 6. GEORGE III.

AT THE COURT AT ST. JAMES'S.

Council Register. No. 6. Geo. III. 1st Jan. 1768 to 1st May 1769.

Page 204.

THE 13TH DAY OF JUNE, 1768.

Present:

The King's Most Excellent Majesty,

Lord President,	Viscount Weymouth,
Duke of Queensberry,	Viscount Falmouth,
Lord Chamberlain,	Viscount Clare,
Earl of Hillsborough,	Richard Rigby, Esqr.
Earl of Shelburne,	

New Yorke.

Extract of Letter from the Governor relative to the settling the Boundary Line between this Province and Quebec.

Refd. to a Committee.

Upon reading this day at the Board an extract of a letter from Sir Henry Moore, Governor of New York, to the Right Honorable the Earl of Shelburne, dated the 16th of January last, relative to the settling the boundary line between that province and Quebec. It is ordered by His Majesty in Council that the said extract of a letter be and it is hereby referred to the Right Honorable the Lords of the Committee of Council for Plantation Affairs, to consider the same and report their opinion thereupon to His Majesty at this Board.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 6. Geo. III. 1st Jan. 1768 to 1st May 1769.

Page 218.

THE 28TH DAY OF JUNE, 1768.

By the Right Honourable the Lords of the Committee of Council for Plantation Affairs.

Present:

Lord President,	Viscount Falmouth,
Earl of Hillsborough,	Master of the Rolls.

New York.

Extract of a letter from the Governor relative to the settling the Boundary Line between this Province and Quebec.

Refd. to the Board of Trade.

His Majesty having been pleased to refer unto this Committee an extract of a letter from Sir Henry Moore, Governor of New York, to the Right Honorable the Earl of Shelburne, dated the 16th January last, relative to settling the boundary line between that Province and Quebec. The Lords of the Committee in obedience to His Majesty's said order of reference this day took the said extract of a letter into consideration, and are hereby pleased to refer the same (a copy whereof is hereunto annexed) to the Lords Commissioners for Trade and Plantations to consider thereof, and report their opinion thereupon to the Committee.

AT THE COUNCIL CHAMBER, WHITEHALL.

Council Register. No. 6. Geo. III. 1st Jan. 1768 to 1st May 1769.

Pages 287–8.

THE 9TH DAY OF AUGUST, 1768.

By the Right Honourable the Lords of the Committee of Council for Plantation Affairs.

Present:

Earl of Hillsborough,	Lord Le Despencer,
Viscount Weymouth,	Master of the Rolls.

New York.

Committee Report upon an Extract of a Letter from the Governor for settling the Boundary Line between this Province and Quebec.

Your Majesty having been pleased by your Order in Council of the 13th of June last, to refer unto this Committee an extract of a letter from Sir Henry Moore, Governor of New York, to the Earl of Shelburne, dated the 16th of January last, relative to settling the boundary line between that province and Quebec, the Lords of the Committee did on the 28th of June last, take the said extract into their consideration, and were pleased to refer the same to the Lords Commissioners for Trade and Plantations, who have thereupon reported to this Committee, "That it having been mutually agreed upon between Sir Henry Moore and the Commander-in-Chief of the Province of Quebec, at a meeting for that purpose appointed, that the line of division between these provinces should be fixed at the 46th degree of north latitude, comformable to the limits laid down in Your Majesty's proclamation of October, 1763, and it having been ascertained and determined by proper observations where the said line would pass. The said Lords Commissioners therefore propose, that these proceedings above stated should be confirmed by Your Majesty's Order in Council, directing that the said line of division should be run out and continued as far as each province respectively extends; but they strongly recommended a proviso to be inserted in the said order that nothing therein contained should extend to affect the properties of Your Majesty's new subjects having possessions under proper titles on those parts of the lands on the south side of this line, the dominion of which was not disputed on the part of the Crown of Great Britain; and also a proviso, that such determination shall not operate wholly to deprive Your Majesty's said new subjects of

46th 2 second page

such concessions on the south side of the said line, on which they may have made actual settlement and improvement, although the lands may have been disputed by the Crown of Great Britain; but that such possessors shall be entitled to so much of the said concessions as shall be proportioned to their improvements at the rate of fifty acres for every three acres of improvement; provided they take out grants for the same under the seal of the Province of New York, subject to the usual quit rents; and provided also, that the grant to no one person shall exceed twenty thousand acres."

The Lords of the Committee upon consideration thereof do humbly report to Your Majesty that they agree in opinion with the said Lords Commissioners that the proceedings above mentioned should be confirmed by Your Majesty's Order in Council; and that the line of division should be run out and continued so far as each province respectively extends, under the provisos and conditions above proposed by the said Lords Commissioners for Trade and Plantations.

AT THE COURT AT ST. JAMES'S.

Council Register.
No. 6.
Geo. III.
1st Jan. 1768
to
1st May 1769.

Pages 308-9.

THE 12TH DAY OF AUGUST, 1768.

Present:

The King's Most Excellent Majesty,

Duke of Grafton,	Viscount Falmouth,
Duke of Rutland,	Viscount Barrington,
Duke of Queensberry,	Viscount Villiers,
Marquess of Granby,	Lord North,
Earl of Litchfield,	James Stuart Mackenzie, Esqr.,
Earl of Hillsborough,	Thomas Harley, Esqr.,
Earl of Shelburne,	Sir Edward Hawke,
Viscount Weymouth,	

New York and Quebec.

Proceedings in settling the Boundary Line between these provinces. Confirmed.

Whereas there was this day read at the Board a report from the Right Honorable the Lords of the Committee of Council for Plantation Affairs dated the 9th of this instant upon considering a report made by the Lords Commissioners for Trade and Plantations upon an extract of a letter from Sir Henry Moore, Governor of New York, to the Earl of Shelburne, dated the 16th of January last, relative to the settling the boundary line between that province and Quebec, by which report it appears, that having been mutually agreed upon between Sir Henry Moore and the Commander in Chief of the Province of Quebec at a meeting for that purpose appointed, that the line of division between these provinces should be fixed at the 45th degree of north latitude conformable to the limits laid down in His Majesty's proclamation of October, 1763, and it having been ascertained and determined by proper observations where the said line would pass, it is therefore proposed that these proceedings above stated should be confirmed by His Majesty.

His Majesty taking the said report into consideration was pleased with the advice of his Privy Council to approve thereof, and doth hereby confirm the said proceedings above stated, and order that the said line of division be run out and continued as far as each province respectively extends; provided that nothing herein contained shall extend to effect the properties of His Majesty's new subjects having possessions under proper titles on those parts of the lands on the south side of the line, the dominion of which was not disputed on the part of the Crown of Great Britain; and provided also that this determination shall not operate wholly to deprive His Majesty's new subjects of such concessions on the south side of the said line on which they may have made actual settlement and improvement although the lands may have been disputed by the Crown of Great Britain; but that such possessors shall be entitled to so much of the said concessions as shall be proportioned to their improvements at the rate of fifty acres for every three acres of improvement, provided they take out grants for the same under the seal of the Province of New York subject to the usual quit rents; and provided also that the grant to no one person shall exceed twenty thousand acres, and the Governor or Commander in Chief of His Majesty's said Provinces of New York and Quebec, for the time being, and all others whom it may concern, are to take notice of His Majesty's pleasure hereby signified and govern themselves accordingly.

PENTAL ISLAND CASE.

1872.

1872.

VICTORIA.

PENTAL ISLAND.

Ordered by the Legislative Assembly *to be printed, 24th October,* 1872.

CANTERBURY,

Governor. Message No. 15.

The Governor transmits to the Legislative Assembly a copy of a despatch from the Secretary of State for the Colonies, forwarding a copy of Her Majesty's Order in Council, approving of award, by the Privy Council, of Pental Island to the Colony of Victoria.

Government Offices,
Melbourne, 24th October, 1872.

Victoria, No. 60. Downing-street, 21st August, 1872.

MY LORD,

With reference to my despatch, No. 52, of 26th September last, respecting the petitions from Victoria and New South Wales as to the right of possession of Pental Island in the River Murray, I transmit to you for your information two copies of Her Majesty's Order in Council approving the report of the Judicial Committee on the petitions. Report. 2

I have, &c.,

Governor Viscount Canterbury, K.C.B., &c., &c., &c. KIMBERLEY.

AT THE COURT AT OSBORNE HOUSE, ISLE OF WIGHT.

THE 9TH DAY OF AUGUST, 1872.

Present:

The Queen's Most Excellent Majesty,
His Royal Highness the Prince of Wales,
Lord President, Mr. Childers,
Mr. Secretary Cardwell, Lord Advocate Young.

Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council, dated the 11th of July, 1872, in the words following, viz. :—

"Your Majesty having been pleased by Your Order in Council of the 3rd November, 1871, specially to refer unto this Committee a humble petition of John Henry Thomas Viscount Canterbury, Governor of the Colony of Victoria, by and with the advice and consent of the Executive Council of the said Colony, setting forth—1. That differences have arisen between the Colony of New South Wales and the Colony of Victoria as to a tract of land called or known as Pental Island, which is claimed by each of the said Colonies as part of the territory thereof: 2. That the petitioner and the Right Honorable Somerset Richard Earl of Belmore, Governor of the Colony of New South Wales, by and with the advice and consent of the Executive Council of the said Colony, have agreed to submit the said differences to Your most Excellent Majesty in Council to award and declare to which of the said Colonies the said tract of land exclusively belongs, and have also agreed that the said Colonies shall respectively abide by the determination of Your most Excellent Majesty in Council in the premises: 3. That after the petitioner and the said Governor of the Colony of New South Wales had agreed to submit the said differences as aforesaid they issued a joint Commission to take evidence upon the matters in difference in the Colony of New South Wales and in the Colony of Victoria, for transmission to Your most Excellent Majesty in Council: 4. That the Honorable Edward Deas Thomson, Companion of the most honorable Order of the Bath, a Member of the Legislative Council of the Colony of New South Wales, and the Honorable John O'Shanassy, Companion of the most distinguished Order of St. Michael and Saint George, a Member of the Legislative Council of the Colony of Victoria, were the Commissioners respectively appointed by the said Governor of New South Wales in Council, and the petitioner and such Commissioners duly executed and returned the Commission issued as aforesaid on the 1st day of October, in the year of Our Lord 1870, and a true record of all matters relating to the said Commission and of the proceedings and evidence thereunder is transmitted herewith, and humbly praying that Your Most Excellent Majesty in Council will be graciously pleased to award and declare whether the said tract of land called Pental Island is part of the territory of the Colony of New South Wales, or part of the territory of the Colony of Victoria.

"And Your Majesty having likewise been pleased by Your Order in Council of the 3rd November, 1871, specially to refer unto this Committee a humble petition of the Government of Your Majesty's Colony of New South Wales setting forth— 1. That a dispute has arisen between the petitioners and the Government of Your Majesty's Colony of Victoria touching the right of territorial possession of an island in the River Murray known as Pental Island: 2. That in the eighteenth and nineteenth years of Your Majesty's reign an Act was passed by the Imperial Parliament of Great Britain and Ireland entitled 'An Act to enable Her Majesty to assent to a Bill as amended of the Legislature of New South Wales to confer a Constitution on New South Wales, and to grant a Civil List to Her Majesty,' in the fifth section of which Act it is provided as follows:—

> 'And whereas by the before-mentioned Act of the fourteenth year of Her Majesty, chapter fifty-nine, it is, amongst other things, enacted that the territories therein described as bounded on the north and north-east by a straight line drawn from Cape Howe to the nearest source of the River Murray, and thence by the course of that river to the western boundary of the Colony of South Australia, should be erected into a separate Colony to be known and designated as the Colony of Victoria:
>
> 'And whereas doubts have been entertained as to the true meaning of the said description of the boundary of the said Colony: It is hereby declared and enacted that the whole watercourse of the said River Murray, from its source therein described to the eastern boundary of the Colony of South Australia, is and shall be within the teritory of New South Wales.'

3. That under the provisions of the said recited Act the petitioners claim that the watercourse of the said River Murray is the channel or channels in which the waters of the said river flow, and that the whole of such watercourse including such islands in the said river as are formed by the severance of the said watercourse into two channels are within the territory of New South Wales, and that therefore under the circumstances hereinafter appearing the said Pental Island is within the territory of New South Wales: 4. That the said Pental Island is formed by the severance of the said River Murray into two channels which after a tortuous course almost parallel to each other reunite and form again one watercourse, that the channel of the said river just above the said Pental Island is of the width of 250 feet or thereabouts, and the channel of the said river on the northern side of the said island is of the width of 300 feet or thereabouts, and the channel of the said river on the southern side of the said island is of the width of 220 feet or thereabouts: 5. That the said River Murray is in ordinary seasons navigable for small steamers and vessels of light draft except during the later months of the summer and the autumn, and that during the months in which the said river is navigable the southern and northern channels thereof surrounding the said island are equally suitable for navigation in point of width and depth of water, but in consequence of the lessees of the said island having thrown two bridges across the said southern channel connecting the said island with the mainland the ships navigating the said river are compelled to use the northern channel alone: 6. That the waters of the said River Murray in the northern and southern channels thereof continue to flow throughout the whole year, and the rise and fall thereof is regulated by the rise and fall of the said river throughout its course, that the only waters which flow into the said southern channel from the Colony of Victoria are those of the Loddon River, which does not flow into the said southern channel of the said River Murray except during floods, and at all other periods the only waters in the said southern channel are the waters of the said River Murray: 7. That previously to the separation of the Colony of Victoria from the Colony of New South Wales, or until the passing of the said Act 18 & 19 Vict. c. 54, no question arose as to whether the said two channels of the said River Murray together formed the whole watercourse of the said river, and consequently whether the said Pental Island was within the territory of New South Wales, but after the passing of the said last-mentioned Act the attention of the Crown Lands Commissioner of the Murrumbidgee District in the Colony of New South Wales (being the district in which the said island is situated) was directed to the said description of the boundary of the said Colony of New South Wales in the said Act contained, and thereupon the petitioners claimed the said island as part of the territory of New South Wales, and have ever since received rents and assessments for the use and occupation of the said island from the lessees thereof under the Acts in that behalf in force in the Colony of New South Wales: 8. That with a view to the submission of the matters in dispute touching the said Pental Island between the petitioners and the said Colony of Victoria to the decision of Your most Gracious Majesty, his Excellency the Earl of Belmore, the Governor of the Colony of New South Wales, was pleased to appoint the Honorable Edward Deas Thomson, C.B., and his Excellency Viscount Canterbury, the Governor of the Colony of Victoria, was pleased to appoint the Honorable John O'Shanassy, G.M.C., to be joint Commissioners to make inquiry into the matters so in dispute as aforesaid, and to take evidence thereupon and in pursuance of such Commission the said Commissioners took evidence upon the matters so in dispute as aforesaid, both documentary and oral, in both of the said Colonies, all which evidence the petitioners crave leave to submit to the consideration of Your Majesty: 9. The petitioners have drawn up a statement of their case, as established by the evidence and crave leave to submit the same to the consideration of Your Majesty,

and pray that it may be taken as part of this their petition, and humbly praying Your Majesty most graciously to consider the premises, and that Your Majesty will be graciously pleased to submit this petition and statement of their case for investigation and trial to the Judicial Committee of Your Majesty's Privy Council, and that Your Majesty will be graciously pleased to endorse on this their petition Your Royal Declaration and Order to such effect as Your Majesty shall be pleased to deem necessary in that behalf, and that the petitioners may have and obtain from Your Majesty such further and other relief in the premises as under all the circumstances hereinbefore appearing shall be by Your Majesty deemed just and right.

(Signed) BELMORE, Governor.

On behalf of the Government of New South Wales, 27th January, 1871.

"The Lords of the Committee, in obedience to Your Majesty's said special orders of reference, have taken the said petitions into consideration, and having heard counsel on behalf of the Colony of Victoria, and also on behalf of the Colony of New South Wales, and having inquired into the whole matter, their Lordships do this day agree humbly to report to Your Majesty as their opinion that it ought to be awarded and declared by Your Majesty in Council that the tract of land called Pental Island is part of the territory of the Colony of Victoria."

Her Majesty having taken the said report into consideration was pleased by and with the advice of Her Privy Council to approve thereof, and to order as it is hereby ordered that it be awarded and declared by Her Majesty in Council and it is hereby ordered and declared that the tract of land called Pental Island is part of the territory of the Colony of Victoria. Whereof the Governor, Lieutenant-Governor, or Commander-in-Chief of the Colony of New South Wales, and likewise the Governor, Lieutenant-Governor, or Commander-in-Chief of the Colony of Victoria for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

ARTHUR HELPS.

ONTARIO AND MANITOBA.

ONTARIO AND MANITOBA BOUNDARY.

Special Case.

Sessional Papers. 101 to 161. Vol. XVIII. No. 16 1885.

The Province of Ontario claims that the western boundary of that Province is either (1) the meridian of the most north-westerly angle of the Lake of the Woods, as described in a certain award made on the 3rd August, 1878, by the Hon. Chief Justice Harrison, Sir Edward Thornton, and Sir Francis Hincks; or (2) is a line west of that point.

The Province of Manitoba claims that the boundary between that Province and the Province of Ontario is (1) the meridian of the confluence of the Ohio and Mississippi Rivers; or (2) is that portion of the height of land dividing the waters that flow into Hudson Bay from those which empty into the valley of the great lakes, and lying to the west of the said meridian line.

It has been agreed to refer the matter to the Judicial Committee of Her Majesty's Privy Council, and an appendix has been prepared containing the materials agreed to be submitted with this case for the adjudication of the dispute, each and every of the particulars in the said appendix is submitted *quantum valeat*, and not otherwise.

In addition to the particulars set forth in the appendix, any historical or other matter may be adduced which in the opinion of either party may be of importance to the contention of such party, and (subject to any rule or direction of the Judicial Committee in that behalf) such additional matter is to be printed as a separate appendix by the party adducing the same, and copies are to be furnished at least ten days before the argument.

The book, known as *The Book of Arbitration Documents* may be referred to in the argument for the purpose of showing in part what materials were before the arbitrators.

It is agreed that in the discussion before the Judicial Committee of the Privy Council, reference may be made to any evidence of which Judicial notice may be taken, or which (having regard to the nature of the case, and the parties to it) the Privy Council may think fit material and proper to be considered, whether the same is, or is not, contained in the printed papers.

The questions submitted to the Privy Council are as follows:—

1. Whether the award is, or is not, under the circumstances, binding?
2. In case the award is held not to settle the boundary in question, then what on the evidence is the true boundary between the said Provinces?
3. Whether in case legislation is needed to make the decision on this case binding or effectual, Acts passed by the Parliament of Canada and the Provincial Legislatures of Ontario and Manitoba, in connexion with the Imperial Act, 34 and 35, Vic., cap. 28, or otherwise, will be sufficient, or whether a new Imperial Act for the purpose will be necessary?

C. MOWAT, Attorney-General of Ontario.
JAMES A. MILLER, Attorney-General of Manitoba.

"And humbly praying that Your Majesty in Council will be pleased to take the said special case into consideration, and that the said special case may be referred by Your Majesty to the Lords of the Judicial Committee of the Privy Council to report thereon to Your Majesty at the Board, and that such order may be made thereupon as to Your Majesty shall seem meet. The Lords of the Committee, in obedience to Your Majesty's said order or reference, have taken the said humble petition and special case into consideration, and having heard counsel for the Province of Ontario, and also for the Province of Manitoba, their Lordships do this day agree humbly to report to Your Majesty as their opinion:—

1. That legislation by the Dominion of Canada, as well as by the Province of Ontario, was necessary to give binding effect as against the Dominion and the Province to the award of the 3rd August, 1878, and that, as no legislation has taken place, the award is not binding.

2. That, nevertheless, their Lordships find so much of the boundary lines laid down by that award as relate to the territory now in dispute between the Province of Ontario and the Province of Manitoba to be substantially correct, and in accordance with the conclusions which their Lordships have drawn from the evidence laid before them.

That upon the evidence, their Lordships find the true boundary between the western part of the Province of Ontario and the south-eastern part of the Province of Manitoba to be so much of a line drawn to the Lake of the Woods through the waters eastward of that lake, and west of Long Lake, which divide British North America from the territory of the United States, and thence through the Lake of the Woods to the most north-western point of that lake as runs northward from the United States boundary and from the most north-western point of the Lake of the Woods a line drawn due north until it strikes the middle line of the course of the river, discharging the waters of the lake called Lake Seul, or the Lonely Lake, whether above or below

its confluence with the stream flowing from the Lake of the Woods towards Lake Winnipeg; and their Lordships find the true boundary between the same two Provinces to the North of Ontario and to the south of Manitoba proceeding eastward from the point at which the before-mentioned line strikes the middle line of the course of the river last aforesaid to be along the middle line of the course of the same river (whether called by the name of the English River, or as of the part below the confluence by the name of the river Winnipeg) up to Lake Seul, or the Lonely Lake, and thence along the middle line of Lake Seul, or the Lonely Lake, to the head of that lake, and thence by a straight line to the nearest point of the middle line of the waters of Lake St. Joseph, and thence along that middle line until it reaches the foot or outlet of that lake, and thence along the middle line of the river by which the waters of Lake St. Joseph discharge themselves until it reaches a line drawn due north from the confluence of the rivers Mississippi and Ohio which form the boundary eastward of the Province of Manitoba.

3. That without expressing an opinion as to the sufficiency, or otherwise, of the current legislation of the Province of Ontario and Manitoba, and the Dominion of Canada (if such legislation should take place), their Lordships think it desirable and most expedient that an Imperial Act of Parliament should be passed to make this decision binding and effectual."

Her Majesty having taken the said report into consideration was pleased, by and with the advice of her Privy Council, to approve thereof, and to order, and it is hereby ordered that the same be punctually observed, obeyed, and carried into execution. Whereof the Governor-General of the Dominion of Canada, the Lieutenant-Governor of the Province of Ontario, the Lieutenant-Governor of the Province of Manitoba, and all other persons whom it may concern, are to take notice, and govern themselves accordingly.

C. L. PEEL.

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